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**§ 8574.1. * * *California oil spill contingency plan; establishment by governor**

In addition to any other authority conferred upon the Governor by this chapter, the Governor shall establish a California oil spill contingency plan pursuant to this article.

(Added by Stats.1972, c. 1325, p. 2642, § 1. Amended by Stats.1990, c. 1248 (S.B.2040), § 1, eff. Sept. 24, 1990; Stats.2004, c. 796 (S.B.1742), § 1.)

**§ 8574.2. Provision for integrated and effective state procedure to combat oil spills**

Any plan established pursuant to this article shall provide for an integrated and effective state procedure to combat the results of major oil spills within the state. Such plan shall provide for specified state agencies to implement the plan.

(Added by Stats.1972, c. 1325, p. 2642, § 1.)

**§ 8574.3. State agencies with authority to implement plan; volunteer workers**

State agencies granted authority to implement a plan adopted under this article may use volunteer workers. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation under this section shall be made from the account specified in Section 8574.4.

(Added by Stats.1972, c. 1325, p. 2642, § 1. Amended by Stats.1981, c. 714, p. 2652, § 170.)

**§ 8574.4. State expenditures; accounting; payment; liability of party responsible for spill**

State agencies designated to implement the contingency plan shall account for all state expenditures made under the plan with respect to each oil spill. Expenditures accounted for under this section from an oil spill in marine waters shall be paid from the Oil Spill Response Trust Fund created pursuant to Section 8670.46. All other expenditures accounted for under this section shall be paid from the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund provided for in Article 3 (commencing with Section 13440) of Chapter 6 of Division 7 of the Water Code. If the party responsible for the spill is identified, that party shall be liable for the expenditures accounted for under this section, in addition to any other liability which may be provided for by law, in an action brought by the Attorney General.

The proceeds from any such action for a spill in marine waters shall be paid into the Oil Spill Response Trust Fund.

(Added by Stats.1972, c. 1325, p. 2642, § 1. Amended by Stats.1990, c. 1248 (S.B.2040), § 2, eff. Sept. 24, 1990; Stats.1991, c. 945 (S.B.200), § 1.)

**§ 8574.7. Marine oil spills; inclusion in contingency plan; elements**

The Governor shall require the administrator, in consultation with the State Interagency Oil Spill Committee and not in conflict with the National Contingency Plan, to amend the California oil spill contingency plan by adding a marine oil spill contingency planning section which provides for the best

achievable protection of the coast and marine waters. The marine oil spill contingency planning section shall consist of all of the following elements:

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

(b) A regional and local planning element which shall provide the framework for the involvement of regional and local agencies in the state effort to respond to a marine oil spill, and shall ensure the effective and efficient use of regional and local resources in all of the following:

(1) Traffic and crowd control.

(2) Firefighting.

(3) Boating traffic control.

(4) Radio and communications control and provision of access to equipment.

(5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.

(7) Provision of medical emergency services.

(c) A coastal protection element which establishes the state standards for coastline protection. The administrator, in consultation with the State Interagency Oil Spill Committee, the Coast Guard and Navy, and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:

(1) Appropriate shipping lanes and navigational aids for tankers, barges, and other commercial vessels to reduce the likelihood of collisions between tankers, barges, and other commercial vessels. Designated shipping lanes shall be located off the coastline at a distance sufficient to significantly reduce the likelihood that disabled vessels will run aground along the coast of the state.

(2) Ship position reporting and communications requirements.

(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.

(4) Required emergency response vessels which are capable of preventing disabled tankers from running aground.

(5) Required emergency response vessels which are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.

(6) An expedited decision making process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.

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

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

(d) An environmentally and ecologically sensitive areas element which shall require the administrator, in conjunction with appropriate local agencies, to prepare and distribute to facilities and local and state agencies, regional maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast. The maps shall designate those areas which have particularly high priority for protection against oil spills. The administrator shall specify protective requirements to be taken in the event of an oil spill for each environmentally and ecologically sensitive area.

(e) The administrator shall complete the marine oil spill contingency planning section by January 1, 1993. Any recommendations for action that cannot be financed or implemented pursuant to the existing authority of the administrator shall be reported to the Legislature along with recommendations for financing those actions.

(f) "Administrator," for purposes of this section, means the administrator appointed by the Governor pursuant to Section 8670.4.

(Added by Stats.1990, c. 1248 (S.B.2040), § 7, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 2.)

**§ 8574.8. Revised oil spill contingency plans**

The administrator shall submit to the Governor and the Legislature the amended California oil spill contingency plan required, pursuant to Section 8574.7, by January 1, 1993. The administrator shall thereafter submit revised plans every three years.

(Added by Stats.1990, c. 1248 (S.B.2040), § 9. Amended by Stats.2004, c. 796 (S.B.1742), § 3.)

**§ 8574.9. State Interagency Oil Spill Committee**

(a) The State Interagency Oil Spill Committee shall consist of all of the following persons:

(1) The administrator named by the Governor pursuant to Section 8670.4.

(2) The Chairperson of the State Lands Commission, or his or her designee.

(3) The Chairperson of the California Coastal Commission, or his or her designee.

(4) The Chairperson of the San Francisco Bay Conservation and Development Commission, or his or her designee. The chairperson of the commission shall only have voting and decisionmaking authority regarding matters under the jurisdiction of the commission.

(5) A designated representative from all of the following agencies:

(A) The Office of Emergency Services.

(B) The State Water Resources Control Board.

(C) The Department of Justice.

(D) The California Highway Patrol.

(E) The California National Guard.

(F) The Division of Oil and Gas in the Department of Conservation.

(G) The Department of Toxic Substances Control.

(H) The Department of Transportation.

(I) The Department of Parks and Recreation.

(J) The Department of Water Resources.

(K) The Department of Forestry and Fire Protection.

(L) The State Fire Marshal.

(M) The California regional water quality control boards (one representative).

(N) The Resources Agency.

(O) The California Environmental Protection Agency.

(P) The California Conservation Corps.

(Q) The Office of Environmental Health Hazard Assessment.

(R) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(b) The administrator shall be the chairperson of the committee. The administrator shall ensure that personnel serve as staff to the committee.

(Added by Stats.1990, c. 1248 (S.B.2040), § 11, eff. Sept. 24. 1990. Amended by Gov.Reorg.Plan No. 1 of 1991, § 71, eff. July l7, 1991; Stats.1992, c. 1313 (A.B.3173), § 1, eff. Sept. 30, 1992; Stats.2001, c. 748 (AB 715), §1.)

**§ 8574.10. Review subcommittee; review and comment of regulations and guidelines**

(a) The Review Subcommittee of the State Interagency Oil Spill Committee is hereby established. As used in this chapter, "review subcommittee" means the Review Subcommittee of the State Interagency Oil Spill Committee. The Director of Fish and Game, who shall serve as chair of the review subcommittee, the Executive Officer of the State Lands Commission, the Executive Director of the California Coastal Commission, the State Fire Marshal, the State Oil and Gas Supervisor, the Executive Director of the State Water Resources Control Board, and the Executive Director of the San Francisco Bay Conservation and Development Commission, or their designees, shall constitute the members of the review subcommittee. The representative of the San Francisco Bay Conservation and Development Commission only shall have voting and decision making authority regarding matters under the jurisdiction of the commission. The administrator may serve as the designee of the Director of Fish and Game.

(b) All regulations and guidelines adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) and Division 7.8 (commencing with Section 8750) of the Public Resources Code, and amendments to the California oil spill contingency plan, shall, prior to adoption, be submitted to the review subcommittee for review and comment.

(c) Within 60 days from the date of receipt of regulations, guidelines, or amendments pursuant to subdivision (a), the review subcommittee shall review and submit comments to the submitting agency. Any recommendation of the review subcommittee shall be based on the standards of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, consisting of the provisions specified in Section 8670.1. This comment period may overlap any other comment periods required by law or allowed by the administrator.

(d) The comments and recommendations of the review subcommittee shall not be binding on the submitting agency. Prior to adoption, and within 30 days from the date of receipt of a response from the review subcommittee, the submitting agency shall respond in writing to the review subcommittee concerning all of the findings and recommendations of the review subcommittee. The submitting agency may reject the recommendations of the review subcommittee only if the submitting agency determines that the action it chooses more effectively furthers the purposes of, and more effectively complies with, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. Whenever the submitting agency departs from a finding or recommendation of the review subcommittee, the written response of the submitting agency shall state its rationale for concluding that its action more effectively furthers the purposes of, and more effectively complies with, that act. Any public hearing that is required by this chapter or any other statute shall be held after the submitting agency has filed a response to the review subcommittee.

(Added by Stats.1990, c. 1248 (S.B.2040), § 11.5, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 1, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 1; Stats.1994, c. 523 (A.B.3261), § 1; Stats.2001, c. 748 (A.B.715), § 2; Stats.2004, c. 796 (S.B.1742), § 4.)

## Article 5. Office of Emergency Services

**§ 8589.7. Hazardous materials; reporting of spills and releases, or of ruptures, explosions or fires involving pipelines; public agency notification**

(a) In carrying out its responsibilities pursuant to subdivision (b) of Section 8574.17, the Office of Emergency Services shall serve as the central point in state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases. The Office of Emergency Services is the only state agency required to make the notification required by subdivision (b).

(b) Upon receipt of a report concerning a spill, unauthorized release, or other accidental release involving hazardous materials, as defined in Section 25501 of the Health and Safety Code, or concerning a rupture of, or an explosion or fire involving, a pipeline reportable pursuant to Section 51018, the Office of Emergency Services shall immediately inform the following agencies of the incident:

(1) For an oil spill reportable pursuant to Section 8670.25.5, the Office of Emergency Services shall inform the administrator for oil spill response, the State Lands Commission, the California Coastal Commission, and the California regional water quality control board having jurisdiction over the location of the discharged oil.

(2) For a rupture, explosion, or fire involving a pipeline reportable pursuant to Section 51018, the Office of Emergency Services shall inform the State Fire Marshal.

(3) For a discharge in or on any waters of the state of a hazardous substance or sewage reportable pursuant to Section 13271 of the Water Code, the Office of Emergency Services shall inform the appropriate California regional water quality control board.

(4) For a spill or other release of petroleum reportable pursuant to Section 25270.8 of the Health and Safety Code, the Office of Emergency Services shall inform the local administering agency that has jurisdiction over the spill or release.

(5) For a crude oil spill reportable pursuant to Section 3233 of the Public Resources Code, the Office of Emergency Services shall inform the Division of Oil, Gas, and Geothermal Resources and the appropriate California regional water quality control board.

(c) This section does not relieve a person who is responsible for an incident specified in subdivision (b) from the duty to make an emergency notification to a local agency, or the 911 emergency system, under any other law.

(d) A person who is subject to Section 25507 of the Health and Safety Code shall immediately report all releases or threatened releases pursuant to that section to the appropriate local administering agency and each local administering agency shall notify the Office of Emergency Services and businesses in their jurisdiction of the appropriate emergency telephone number that can be used for emergency notification to the administering agency on a 24-hour basis. The administering agency shall notify other local agencies of releases or threatened releases within their jurisdiction, as appropriate.

(e) No facility, owner, operator, or other person required to report an incident specified in subdivision (b) to the Office of Emergency Services shall be liable for any failure of the Office of Emergency Services to make a notification required by this section or to accurately transmit the information reported.

(Added by Stats.1994, c. 1214 (A.B.3404), § 2. Amended by Stats.1995, c. 91 (S.B.975), § 46; Stats.1995, c. 155 (A.B.204), § 1; Stats.1996, c. 605 (A.B.1376), § 1.)

## Article 9.5. Disaster Preparedness

### § 8607. Standardized emergency management system; course of instruction; implementation; coordination of multiple jurisdiction or agency operations; after-action reports

(a) By December 1, 1993, the Office of Emergency Services, in coordination with all interested state agencies with designated response roles in the state emergency plan and interested local emergency management agencies shall jointly establish by regulation a standardized emergency management system for use by all emergency response agencies. The public water systems identified in Section 8607.2 may review and comment on these regulations prior to adoption. This system shall be applicable, but not limited to, those emergencies or disasters referenced in the state emergency plan. The standardized emergency management system shall include all of the following systems as a framework for responding to and managing emergencies and disasters involving multiple jurisdictions or multiple agency responses:

(1) The Incident Command Systems adapted from the systems originally developed by the FIRESCOPE Program, including those currently in use by state agencies.

(2) The multiagency coordination system as developed by the FIRESCOPE Program.

(3) The mutual aid agreement, as defined in Section 8561, and related mutual aid systems such as those used in law enforcement, fire service, and coroners operations.

(4) The operational area concept, as defined in Section 8559.

(b) Individual agencies' roles and responsibilities agreed upon and contained in existing laws or the state emergency plan are not superseded by this article.

(c) By December 1, 1994, the Office of Emergency Services, in coordination with the State Fire Marshal's Office, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, the Emergency Medical Services Authority, and all other interested state agencies with designated response roles in the state emergency plan, shall jointly develop an approved course of instruction for use in training all emergency response personnel, consisting of the concepts and procedures associated with the standardized emergency management system described in subdivision (a).

(d) By December 1, 1996, all state agencies shall use the standardized emergency management system as adopted pursuant to subdivision (a), to coordinate multiple jurisdiction or multiple agency emergency and disaster operations.

(e)(1) By December 1, 1996, each local agency, in order to be eligible for any funding of response-related costs under disaster assistance programs, shall use the standardized emergency management system as adopted pursuant to subdivision (a) to coordinate multiple jurisdiction or multiple agency operations.

(2) Notwithstanding paragraph (1), local agencies shall be eligible for repair, renovation, or any other nonpersonnel costs resulting from an emergency.

(f) The office shall, in cooperation with involved state and local agencies, complete an after-action report within 120 days after each declared disaster. This report shall review public safety response and disaster recovery activities and shall be made available to all interested public safety and emergency management organizations.

(Added by Stats.1992, c. 1069 (S.B.1841), § 1.)

## Chapter 7.4. Oil Spill Response and Contingency Planning
## Article 1. General Provisions

### § 8670.1. Short title

This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

### § 8670.2. Legislative findings and declaration

The Legislature finds and declares as follows:

(a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.

(b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tank ships, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(l) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(m) California has approximately 1,100 miles of coast, including four marine sanctuaries which occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging. The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 3; Stats.2002, c. 573 (S.B.2090), § 8.)

**§ 8670.3. Definitions**

Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

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

(b)(1) "Best achievable protection" means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable 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 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) "Environmentally sensitive area" means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(f) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

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

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

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

(2) For the purposes of this chapter, "marine facility" includes a drill ship, semi submersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

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

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

(2) "Marine terminal" includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (1) of Section 25270.2 of the Health and Safety Code.

(i) "Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

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

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

(l) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, 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° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

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

(n) "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.

(o) "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.

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

(q)(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.

(r) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(s)(1) "Owner" or "operator" means any of the following:

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

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

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

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

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

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

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

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

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

(w) "Responsible party" or "party responsible" means any of the following:

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

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

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

(y) "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.

(z) "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.

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

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

(ac) "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.

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

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

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

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

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

(Added by Stats.1991, c. 10 (S.B.7), § 1.5, eff. Dec. 13, 1990, operative July 1, 1991. Amended by Stats.1991, c. 300 (A.B.1409), § 1, eff. Aug. 1, 1991; Stats.1991, c. 1115 (S.B.977), § 1; Stats.1992, c. 1313 (A.B.3173), § 2, eff. Sept. 30, 1992; Stats.1994, c. 1200 (S.B.469), § 31, eff. Sept 30, 1994; Stats.1994, c. 1298 (A.B.3425), § 1; Stats.1995, c. 91 (S.B.975), § 47; Stats.1995, c. 265 (S.B.1083), § 2; Stats.1995, c. 940 (A.B.1549), § 1.5; Stats.2001, c. 748 (A.B.715), § 4; Stats.2004, c. 796 (S.B.1742), § 5; Stats.2007, c. 373 (A.B.1220), § 3.)

**§ 8670.4. Administrator for oil spill response**

There shall be an administrator for oil spill response. The administrator shall be a chief deputy director of the Department of Fish and Game. The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor. The appointment by the Governor shall be subject to the advice and consent of the Senate. The compensation of the administrator shall be fixed by the Governor pursuant to law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.5. Duties of administrator, full and adequate response to marine oil spills**

The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

(Added by Stats.1990, c. 1248 (S.B.2040) § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 533 (S.B.1032), § 1; Stats.2004, c. 796 (S.B.1742), §6.)

## Article 2. Duties of the Administrator

**§ 8670.6. Support personnel; deputy administrators**

(a) The administrator shall ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations, risk evaluation and management, and emergency systems safety.

(b) The administrator shall appoint a deputy administrator and an assistant deputy administrator to whom the administrator may delegate all or some responsibilities under this article.

(c) The administrator, consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the administrator, as determined to be necessary, to carry out this article.

(d) The administrator, including staff and the costs of training and equipping the staff, shall be funded by the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.7. Prevention and response to marine oil spills; implementation of oil spill contingency plan; workshops; guideline publication; memorandum of understanding**

(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 California 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 California oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

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

(1) 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) 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 that 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 onscene 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, 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) The administrator shall publish guidelines and conduct periodic reviews of the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill.

(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 that 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.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1993, c. 736 (A.B.2091), § 1; Stats.1995, c. 265 (S.B.1083), § 3; Stats.1996, c. 776 (A.B.3044), § 1; Stats.1997, c. 17 (S.B.947), § 47; Stats.2004, c. 796 (S.B.1742), § 7.)

**§ 8670.8. Training programs**

(a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the California oil spill contingency plan or under local governmental contingency plans prepared and approved under this chapter.

(c) Funding for activities undertaken pursuant to subdivisions (a) and (b) shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(d) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

(Added Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 8.)

**§ 8670.8.5. Volunteer workers**

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

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 9.)

**§ 8670.9. Interstate compact regarding marine oil transportation; discussion with coastal states**

(a) The administrator shall enter into discussions on behalf of the state with the States of Alaska, Hawaii, Oregon, and Washington, for the purpose of developing interstate agreements regarding oil spill prevention and response. The agreements shall address, including, but not limited to, all of the following:

(1) Coordination of vessel safety and traffic.

(2) Spill prevention equipment and response required on tank ships and tank barges and at terminals.

(3) The availability of oil spill response and cleanup equipment and personnel.

(4) Other matters that may relate to the transport of oil and oil spill prevention, response, and cleanup.

(b) The administrator shall coordinate the development of these agreements with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 5; Stats.2004, c. 796 (S.B.1742), § 10.)

**§ 8670.10. Emergency drills; coordination among agencies**

(a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(b) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to subdivision (a). The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(c) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(d) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 6; Stats.2004, c. 796 (S.B.1742), § 11.)

**§ 8670.12. Improvement of responses to emergencies; studies and evaluations**

(a) The administrator shall conduct studies and evaluations necessary for improving oil spill response, containment, and cleanup and oil spill wildlife rehabilitation in marine waters and marine oil transportation systems. The administrator may expend moneys from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, enter into consultation agreements, and acquire necessary equipment and services for the purpose of carrying out these studies and evaluations.

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

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

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

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

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

(1) Equipment and technology needs.

(2) Coordination with private response personnel.

(3) Liability and insurance.

(4) Compensation.

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

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.13. New technologies; feasibility report**

The administrator shall periodically evaluate the feasibility of requiring new technologies to aid prevention, response, containment, cleanup and wildlife rehabilitation.

(Added by Stats.1990, c. 1248 (S.B.2040) § 17 eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 12.)

**§ 8670.13.1. Oil spill cleanup agents; regulations for expedited licensing, testing, and use; exception; application; fee**

(a) The administrator shall license all oil spill cleanup agents, and shall adopt regulations governing the expedited testing, licensing, and use of oil spill cleanup agents. The administrator shall utilize toxicity and efficacy tests and other information from government and private agencies developed for each specific category of chemical countermeasure in determining the acceptability of an oil spill cleanup agent for license and use.

(b) Sorbents and other cleanup devices that do not employ the use of active chemical cleanup agents, or otherwise determined by the administrator not to cause aquatic toxicity for purposes of oil spill response, are not subject to subdivision (a).

(c) The administrator may charge applicants a fee for the costs of processing an application for a license for an oil spill cleanup agent, not to exceed one thousand dollars ($1,000). The administrator may require renewal of a license every five years, and may charge a fee for the cost of processing the renewal of the license for an oil spill cleanup agent, not to exceed one hundred dollars ($100). Only one license per cleanup agent shall be required statewide.

(Added by Stats.1995, c. 265 (S.B.1083), § 4. Amended by Stats.1996, c. 390 (S.B.794), § 1, eff. Aug. 19, 1996, operative Aug. 19, 1996.)

**§ 8670.13.2. Licensing regulations; filing; publication**

The administrator shall prepare and periodically revise regulations regarding licensing of oil spill cleanup agents. The authority of the administrator shall be substituted for the authority of the State Water Resources Control Board and cross references shall be corrected. The administrator shall submit these regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. These regulations are exempt from the Administrative Procedure Act. The regulations shall become effective upon filing.

(Added by Stats.1996, c. 390 (S.B.794), § 2, eff. Aug. 19, 1996, operative Aug. 19, 1996**.** Amended by Stats.1997, c. 17 (S.B.947), § 48; Stats.2004, c. 796 (S.B.1742), § 13.)

**§ 8670.14. Coordination with federal programs**

The administrator shall coordinate the oil spill prevention and response programs and marine facility, tank vessel, and nontank vessel safety standards of the state with federal programs to the maximum extent possible.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 7; Stats.2004, c. 796 (S.B.1742), § 14.)

**§ 8670.15. Annual Report**

***Repealed by Stats.1995, c. 337 (A.B.1742), § 1.***

**Prior to Repeal:** (Added by Stats.1990, c. 1248 (S.B.2040), §17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1814 (S.B.2025), § 2)

## Article 3. Marine Safety

### § 8670.16. Promotion of federal statutes or regulations

The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government that establish all of the following requirements:

(a) Each tank ship using ports in the state shall have alarms on the bridge that give warning any time an attempt is made to control the tank ship manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tank ship using ports in the state shall have in good working order, all of the following:

(1) Two "VHF" bridge-to-bridge radiotelephones.

(2) One single-side band radiotelephone.

(3) One satellite communication device.

(4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Each tank ship and tank barge shall use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallon Islands, and the North Coast.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990; Amended by Stats.2001, c. 748 (A.B.715), § 8.)

### § 8670.17. Marine terminals; adoption of regulations; scope of regulations

(a) The administrator shall adopt regulations regarding the equipment, personnel, and operation of vessels to and from marine terminals that are used to transfer oil.

(b) The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, both of the following:

(1) A requirement that the vessel has functional equipment that is compatible with any vessel traffic advisory control system that may be established along the California coast.

(2) A requirement that the vessel, while in marine waters, has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 1298 (A.B.3425), § 2; Stats.1995, c. 337 (A.B.1742), § 2; Stats.2001, c. 748 (A.B.715), § 9.)

### § 8670.17.1. Provision of services to vessels, ports and port users necessitated by this article; reimbursements

The administrator may, for purposes of efficiency, safety, or implementation consistency, provide for services to vessels, ports, and port users which are necessary to achieve requirements mandated pursuant to this article. The administrator may establish or authorize reimbursement for those services which do not exceed the reasonable costs incurred in implementing and administering the service.

(Added by Stats.1993, c. 1190 (S.B.171), § 1, eff. Oct. 11, 1993.)

**§ 8670.17.2. Tugboat escorts for tankers and barges; adoption of regulations; public hearings**

(a) The administrator shall adopt regulations governing tugboat escorts for tank ships and tank barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tank ships and tank barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations that differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations that require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (c).

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

(Added by Stats.1995, c. 940 (A.B.1549), § 2. Amended by Stats.2001, c. 748 (A.B.715), §10.)

**§ 8670.18. Inspection of vessels; evaluation of inspection program**

(a) The administrator may inspect or cause to be inspected on a regular basis all vessels.

(b) The administrator shall evaluate and periodically review the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:

(1) The frequency and scope of inspections.

(2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.

(3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.

(4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.

(5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.

(c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy the deficiencies.

(d) If, within a reasonable time, the administrator cannot remedy deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Lempert-Keene-Seastrand Oil Spill

Prevention and Response Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections.

(e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 2, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 3; Stats.2004, c. 796 (S.B.1742), § 15.)

**§ 8670.19. Oil spill contingency plan; review by administrator; amendment recommendations on remand; content**

(a) The administrator shall periodically conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

(1) Segment the coast into appropriate areas as necessary.

(2) Evaluate the oil spill contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and any other area determined to be necessary, including those response resources properly authorized for cascading into the area, to ensure the best achievable protection of the coastline, set forth in the California oil spill contingency plan, including the marine oil spill contingency planning section.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 533 (S.B.1032), § 2; Stats.2004, c. 796 (S.B.1742), § 16.)

**§ 8670.20. Vessel within specified distance of state shore; notice; events disabling vessel**

(a) For the purposes of this section, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(b) Any party responsible for a vessel shall notify the Coast Guard within one hour of a disability if the disabled vessel is within 12 miles of the shore of this state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled vessel within 12 miles of the shore of this state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled vessels.

(c) Whenever the Office of Emergency Services receives notice of a disabled vessel, the office shall immediately notify the administrator. If the administrator receives notice from any other source regarding the presence of a disabled vessel within 12 miles of the shore of this state, the administrator shall immediately notify the Office of Emergency Services.

(d) For the purposes of this section, a vessel shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding that creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, "loss" means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but that creates the serious possibility of an oil spill or an occurrence that may result in an oil spill.

(e) For the purposes of this section, a tank barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the tank barge becomes disabled through occurrences specified in subdivision (d).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 337 (A.B.1742), § 3; Stats.2001, c. 748 (A.B.715), § 11.)

**§ 8670.21. Vessel traffic service and monitoring systems; funding; restrictions on vessels with noncomplying equipment; marine exchange of Los Angeles and Long Beach Harbors**

(a) As used in this section, the following terms have the following meanings:

(1) "Vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) "VTS system" means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors, or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic, to prevent collisions and groundings.

(c) A plan developed by the administrator, in consultation with the Coast Guard, shall provide for implementing and maintaining VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(d)(1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and

Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting tank barges and tank ships from accepting or unloading oil at marine terminals if a tank barge or tank ship is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant the money that is determined to be necessary for the purchase and installation of equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f)(1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development, implementation, and operation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced operation of a fully federally funded VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of "responsible party" pursuant to Section 8670.3 for purposes of this chapter.

(8) Upon request by the administrator, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange. Upon receiving the report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach

developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan. If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan, the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not complied with that order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code, a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1991, c. 945 (S.B.200), § 2; Stats.1995, c. 337 (A.B.1742), § 4; Stats.1996, c. 362 (A.B.748), § 1; Stats.1997, c. 17 (S.B.947), § 49; Stats.2001, c. 748 (A.B.715), § 12; Stats.2004, c. 796 (S.B.1742), § 17.)

**§ 8670.22. Federal double hull requirements; docking of noncomplying vessels**

Any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading, or unloading at any marine terminal in the state.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept, 24, 1990.)

**§ 8670.23. Harbor safety committees; members; qualifications; chairperson; expenses**

(a) The administrator shall establish Harbor Safety Committees for harbors and adjacent regions of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco; and Humboldt Bay.

(b) The administrator shall determine the geographic area for each harbor safety committee.

(c) The administrator shall appoint to each harbor safety committee, for a term of three years, all of the following members, and their alternates:

(1) A designee of a port authority within the harbor.

(2) A representative of tank ship operators.

(3) A representative of the pilot organizations within the harbor.

(4) A representative of dry cargo vessel operators.

(5) A representative of commercial fishing operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A designee of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco Bay, the administrator shall appoint a designee of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A designee of the Captain of the Port from the United States Coast Guard, the United States Army Corps of Engineers, the National Oceanographic and Atmospheric Administration, and the United States Navy to the extent that each consents to participate on the committee.

(10) A representative of tug or tank barge operators, who is not also engaged in the business of operating either tank ships or dry cargo vessels.

(11) A representative of pleasure boat operators.

(12) A harbor safety committee may petition the administrator with a request for a new or additional membership position needed to conduct the harbor safety committee business and that reflects the makeup of the local maritime community. The approval of this petition shall be at the sole discretion of the administrator.

(13) A harbor safety committee may petition the administrator for the elimination of a new or additional membership position requested and approved pursuant to paragraph (12). The approval of this petition shall be at the sole discretion of the administrator.

(d) The members appointed from the categories listed in paragraphs (2), (3), (4), and (10) of subdivision (c) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(1) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(2) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(3) Has held or is presently holding a shoreside position with direct operational control of vessels.

(4) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities relating to the safe navigation of vessels.

(e) The administrator shall appoint a chairperson and vice chairperson for each harbor safety committee from the membership specified in subdivision (c). The administrator may withdraw such appointments at his or her sole discretion.

(f) Upon request of the harbor safety committee, the administrator may remove a member.

(g) Each member of a harbor safety committee may be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 1298 (A.B.3425), § 3; Stats.1995, c. 337 (A.B.1742), § 5; Stats.2001, c. 748 (A.B.715), § 13; Stats.2004, c. 796 (S.B.1742), § 18.)

**§ 8670.23.1. Harbor safety committee; harbor safety plan; regulations; implementation; revision**

(a) Each harbor safety committee established pursuant to Section 8670.23 shall be responsible for planning for the safe navigation and operation of tank ships, tank barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor.

(b) The administrator shall adopt regulations for harbor safety committee membership positions required in addition to those specified in Section 8670.23 and for harbor safety plans in consultation with the committees of those harbors listed in Section 8670.23, and other affected parties. The regulations shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee.

(c) The regulations shall ensure that each harbor safety plan includes all of the following elements:

(1) A recommendation determining when tank vessels are required to be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or

navigating in the harbor. The Harbor Safety Committee for San Francisco shall give the highest priority to the continual review and evaluation of tugboat escort regulations. The administrator shall be guided by the recommendations of the harbor safety committee when adopting regulations pursuant to Section 8670.17.2.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

(A) Anchorage designations and sounding checks.

(B) Communications systems.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(d) Each harbor safety plan shall be submitted to the administrator. The administrator shall review and provide comment on the plan for consistency with the regulations.

(e) The administrator shall, in consultation with the harbor safety committees listed in Section 8670.23, implement the plans. The administrator shall adopt regulations necessary to implement the plans. When federal authority or action is required to implement a plan, the administrator shall petition the appropriate federal agency or the United States Congress, as may be necessary.

(f) On or before July 1 of each year, each harbor safety committee shall revise its respective harbor safety plan and report its findings and recommendations to the administrator.

(g) The administrator may direct a harbor safety committee to address any issue affecting maritime safety or security, as appropriate, and to report findings and recommendations on those issues. The administrator shall forward those findings and recommendations to the appropriate authority.

(Added by Stats.1995, c. 337 (A.B.1742), § 6. Amended by Stats.2001, c. 748 (A.B.715), § 14; Stats.2004, c. 796 (S.B.1742), § 19.)

**§ 8670.23.2. Harbor Safety Committee members; immunity from liability**

(a) The Legislature hereby finds and declares that because the administrator must rely on the expertise provided by volunteer members of the harbor safety committees and be guided by their recommendations in making decisions that relate to the public safety, members of the harbor safety committees should be entitled to the same immunity from liability provided other public employees.

(b) Members of the harbor safety committees appointed pursuant to Section 8670.23, while performing duties required by this article or by the administrator, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the harbor safety committee.

(Added by Stats.1995, c. 337 (A.B.1742), § 7.)

**§ 8670.24. Pilotage areas; evaluations**

(a) The administrator shall evaluate all pilotage areas in the state. This evaluation shall include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 20.)

## Article 4. Oil Spill Response

### § 8670.25. Removal of oil discharged in or on marine waters

(a) Any person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters of the state shall immediately contain, cleanup, and remove the oil in the most effective manner which minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

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

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 15.)

### § 8670.25.5. Report of discharged oil; notice to public agencies; exemptions

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

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

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tank ship in marine waters.

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

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

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, Sept. 24, 1990. Amended by Stats.1994, c. 1214 (A.B.3404), § 3; Stats.2001, c. 748 (A.B.715), § 16; Stats.2004, c. 563 (A.B.1408), § 1; Stats.2004, c. 796 (S.B.1742), § 21.5.)

**§ 8670.26. Notification by responding agency**

Any local or state agency responding to a spill of oil shall notify the Office of Emergency Services, if notification as required under Section 8670.25.5, Section 13272 of the Water Code, or any other notification procedure adopted in the California oil spill contingency plan has not occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 22.)

**§ 8670.27. Response and cleanup of spill; refusal to comply with cleanup order and plan**

(a)(1) All potentially responsible parties for discharged oil and all of their agents and employees and all state and local agencies shall carry out response and cleanup operations in accordance with the applicable contingency plan, unless directed otherwise by the administrator or the Coast Guard.

(2) Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility that is the source of a discharge, and all state and local agencies shall carry out spill response consistent with the California oil spill contingency plan or other applicable federal, state, or local spill response plans, and owners and operators shall carry out spill response consistent with their applicable response contingency plans, unless directed otherwise by the administrator or the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 3, eff. Sept. 30, 1992; Stats.2001, c. 748 (A.B.715), § 17; Stats.2004, c. 796 (S.B.1742), § 23.)

## Article 5. Contingency Planning

**§ 8670.28. Oil spill contingency plans; regulations and guidelines governing adequacy; minimum requirements**

(a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and California contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented under this article. All regulations shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the California oil spill contingency plan and not in conflict with the National Contingency Plan. The regulations shall provide for the best achievable protection of coastal and marine resources. The regulations shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receive training in oil spill response and cleanup equipment usage and operations.

(4) Each oil spill contingency plan provides for appropriate financial or contractual arrangements for all necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each oil spill contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each oil spill contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a reasonable worst case oil spill.

(11) Each oil spill contingency plan includes a timetable for implementing the plan.

(12) Each oil spill contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines adopted pursuant to this section shall also include provisions to provide public review and comment on submitted oil spill contingency plans prior to approval.

(c) The regulations adopted pursuant to this section shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313, (A.B.3173), § 3, eff. Sept. 30, 1992; Stats.1995, c. 940 (A.B.1549), § 3; Stats.2001, c. 748 (A.B.715), § 18; Stats.2004, c. 796 (S.B.1742), § 24.)

**§ 8670.28.5. Level of readiness**

An operator shall maintain a level of readiness that will allow effective implementation of the applicable contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.29. Oil spill contingency plan; requirements; availability to state and federal agencies; periodic review; implementation**

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

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

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

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

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

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

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

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

(7) Identify a qualified individual.

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

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

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

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

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

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

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

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

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

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

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

(1) Provisions for site security and control.

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

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

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

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

(6) * * *<u>Provisions for</u> training and drills <u>on elements of the plan</u> at least annually* * *.

<u>(7) Provisions for subjecting all elements of the plan to drills or tests, as specified by the administrator, at least once every three years.</u>

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

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

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

(Added by Stats.2001, c. 748 (A.B.715), § 20. Amended by Stats.2004, c. 796 (S.B.1742), § 25; Stats.2007, c. 373 (A.B.1220), § 4, eff. October 10, 2007.)

**§ 8670.30. Oil spill response organization capabilities; rating; elements**

(a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat

protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator may require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f)(1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator may require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, or for renewal, or prior to reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual spill response performance may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

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

(i)(1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

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

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

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

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

(1) Criteria for successful completion of a drill.

(2) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(3) Regional requirements.

(4) Training.

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

(6) Ownership and employment of response resources.

(7) Conditions for canceling a drill due to hazardous or other operational circumstances.

(l) Any letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

(Added by Stats.2001, c. 748 (A.B.715), § 22.)

**§ 8670.30.5. Review of oil spill contingency plans**

(a) The administrator may review each oil spill contingency plan that has been approved pursuant to Section 8670.29 to determine whether it complies with Sections 8670.28 and 8670.29.

(b) If the administrator finds the approved oil spill contingency plan is deficient, the plan shall be returned to the operator with written reasons why the approved plan was found inadequate and, if practicable, suggested modifications or alternatives. The operator shall submit a new or modified plan within 90 days that responds to the deficiencies identified by the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 23.)

**§ 8670.31. Oil spill contingency plans; review; resubmissions**

(a) Each oil spill contingency plan required under this article shall be submitted to the administrator before a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo operates in the marine waters of the state, or before a marine facility, small marine fueling facility, or mobile transfer unit, operates in the marine waters of the state or where an oil spill therefrom could impact marine waters.

(b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Section 8670.28 and 8670.29.

(c) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).

(d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

(f) After the plan has been approved, it shall be resubmitted every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(g)(1) Each operator of a tank vessel, vessel carrying oil as a secondary cargo, or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A tank vessel, vessel carrying oil as a secondary cargo, or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel or facility is exempt from having to file a response plan with the state, or if the content of the plan submitted by the operator pursuant to Section 8670.29 is substantially the same as the federal response plan or update.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 351 (S.B.2047), § 1; Stats.2001, c. 748 (A.B.715), § 24; Stats.2002, c. 573 (S.B.2090), § 9; Stats.2004, c. 796 (S.B.1742), § 26.)

**§ 8670.32. Nontank vessels; oil spill contingency plan**

***Repealed by Stats.2000, c. 721 (S.B.221), § 2.5, eff. Sept. 27, 2000.***

**Prior to Repeal:** (Added by Stats.1999, c. 687 (S.B.387), § 2, operative Jan. 1, 2001.)

***Repealed by Stats.2001, c. 748 (A.B.715), § 25.***

**Prior to Repeal:** (Added by Stats.1998, c. 964 (S.B.1644), § 1. Amended by Stats.1999, c. 687 (S.B.387) § 1; Stats.2000, c. 721 (S.B.221), § 1.)

***Repealed by Stats.2001, c. 748 (A.B.715), § 26.***

**Prior to Repeal:** (Added by Stats.2000, c. 721 (S.B.221), § 2, operative Jan. 1, 2003.)

**§ 8670.33. Vessels without approved contingency plans; entrance into state marine waters**

(a) If the operator of a tank ship or tank barge for which a contingency plan has not been approved desires to have the tank ship or tank barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tank ship or tank barge into marine waters under an approved contingency plan applicable to a terminal or tank ship, if all of the following are met:

(1) The terminal or tank ship is the destination of the tank ship or tank barge.

(2) The operator of the terminal or the tank ship provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tank ship or tank barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tank ship contingency plan includes all conditions the administrator requires for the operations of tank ship or tank barges traveling to and from the terminal.

(4) The tank ship or tank barge and its operations meet all requirements of the contingency plan for the tank ship or terminal that is the destination of the tank ship or tank barge.

(5) The tank ship or tank barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tank ship or tank barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 27; Stats.2002, c. 573 (S.B.2090), § 10.)

**§ 8670.34. Emergency entrance into state marine waters; application of article**

This article shall not apply to any tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo that enters marine waters of the state because of imminent danger to the lives of crew members or if entering marine waters of the state will substantially aid in preventing an oil spill or other harm to public safety or the environment, if the operators of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo comply with all of the following:

(a) The operators or crew of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo complies at all times with all orders and directions given by the administrator, or his or her designee, while the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo is in marine waters of the state, unless the orders or directions are contradicted by orders or directions of the Coast Guard.

(b) Except for fuel, oil may be transferred to or from the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo while it is in marine waters of the state only if permission is obtained for the transfer of oil and one of the following conditions is met:

(1) The transfer is necessary for the safety of the crew.

(2) The transfer is necessary to prevent harm to public safety or the environment.

(3) An oil spill contingency plan is approved or made applicable to the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo, under subdivision (c).

(c) The tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo shall leave the marine waters of the state as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment, unless an oil spill contingency plan is approved or made applicable to it under this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 28.)

**§ 8670.35. Business and hazardous materials area plans; regulations regarding adequacy of contingency plan elements; local government grants; training fire and police personnel; consistency; review and approval; appropriation**

(a) The administrator, taking into consideration the California oil spill contingency plan, shall promulgate regulations regarding the adequacy of oil spill contingency plan elements of business and hazardous materials area plans required pursuant to Section 25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) Any local government with jurisdiction over or directly adjacent to marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the California oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency that prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days after the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the administrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1999, c. 613 (A.B.503), § 1; Stats.2004, c. 796 (S.B.1742), § 27.)

**§ 8670.36. Review of contingency plans; notice to state agencies; comments**

(a) The administrator shall, within five working days after receipt of a contingency plan prepared pursuant to Section 8670.28 or 8670.35, send a notice that the plan is available for review to the state agencies that comprise the membership of the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall send a copy of the plan within two working days after receiving a request from either committee. The State Lands Commission and the California Coastal Commission shall review the plans for facilities or local governments within the coastal zone. The San Francisco Bay Conservation and Development Commission shall review the plans for marine facilities or local governments within the area described in Sections 66610 and 29101 of the Public Resources Code. Any state agency or committee that comments shall submit its comments to the administrator within 60 days of receipt of the plan. The administrator shall consider all comments in approving or disapproving the plan.

(b) The State Interagency Oil Spill Committee may be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable costs incurred in reviewing contingency plans and participating in public hearings on marine and vessel facility contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.36.1. Small craft refueling dock operators; outreach program; registration; required information; regulations**

(a) To reduce the damages and costs from spills, the administrator shall develop an outreach program to provide assistance to the operators of small craft refueling docks.

(b) The program shall include both of the following:

(1) Voluntary inspections by the administrator. The administrator shall prepare, and maintain on file, a written report recommending how any risk of a spill identified in those inspections may be reduced and how those recommendations could be implemented.

(2) An education and outreach program to inform small craft refueling dock operators and the operators of the vessels they serve of the obligations and potential liabilities from a spill. For the purpose of this section, "vessel" has the same meaning as in Section 21 of the Harbors and Navigation Code.

(c) To ensure effective implementation of the program, each small craft refueling dock shall register with the administrator prior to operating.

(d) The administrator may require information needed to evaluate whether a facility is a small craft refueling dock as defined in Section 8670.3. The administrator may also require any

pertinent information regarding the oil spill risk of a small craft refueling dock. This information may include, but shall not be limited to, the following:

(1) The type of oil handled.

(2) The size of storage tanks.

(3) The name and telephone number of the small craft refueling dock operator.

(4) The location and size of the small craft refueling dock.

(e) The administrator may develop regulations to implement this section.

(Added by Stats.1992, c. 1313 (A.B.3173), § 3, eff. Sept. 30, 1992. Amended by Stats.2001, c. 748 (A.B.715), § 29; Stats.2004, c. 796 (S.B.1742), § 28.)

**§ 8670.36.5. Contingency plans; format**

***Repealed by Stats.2004, c. 796 (S.B.1742), § 29.***

**Prior to Repeal:** (Added by Stats.1993, c. 630 (A.B.1451), § 1.)

**§ 8670.37. Improvement of plans or responses; studies**

(a) The administrator, with the assistance of the State Lands Commission, the California Coastal Commission, and the executive director of the San Francisco Bay Conservation and Development Commission shall carry out studies with regard to improvements to contingency planning and oil spill response equipment and operations.

(b) To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, and other appropriate state and international entities, and duplication with the efforts of other entities shall be minimized.

(c) The administrator, the State Lands Commission, the California Coastal Commission, and the Executive Director of the San Francisco Bay Conservation and Development Commission, may be reimbursed for all costs incurred in carrying out the studies under this section from the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 30.)

**§ 8670.37.5. Animal rescue and rehabilitation stations**

(a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Executive Director of the San

Francisco Bay Conservation and Development Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the California oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of the agreement shall not constitute a California public works project. The agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.61.5.

(e) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(f)(1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (l) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.

(3)(A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and

immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1991, c. 614 (A.B.203), § 1, eff. Oct. 8, 1991; Stats.1993, c. 1202 (S.B.775), § 1; Stats.1995, c. 940 (A.B.1549), § 4; Stats.2001, c. 748 (A.B.715), § 31; Stats.2004, c. 796 (S.B.1742), § 30.)

## Article 5.5. Financial Responsibility

### § 8670.37.51. Certificate of financial responsibility

(a) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless the operator has obtained a certificate of financial responsibility issued by the administrator for that vessel or for the owner of all of the oil contained in and to be transferred to or from that vessel.

(b) No operator of a marine terminal within the state may transfer oil to or from a tank vessel or vessel carrying oil as a secondary cargo unless the operator of the marine terminal has received a copy of a certificate of financial responsibility issued by the administrator for the operator of that vessel or for all of the oil contained in and to be transferred to or from that vessel.

(c) No operator of a marine terminal within the state may transfer oil to or from any vessel that is or is intended to be used for transporting oil as cargo to or from a second vessel unless the operator of the marine terminal has first received a copy of a certificate of financial responsibility issued by the administrator for the person responsible for both the first and second vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to or from both vessels.

(d) No person may operate a marine facility unless the owner or operator of the marine facility has first obtained a certificate of financial responsibility from the administrator for the marine facility.

(e) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless, at least 24 hours prior to the transport, the administrator has received both of the following:

(1) A copy of a certificate applicable to that vessel or to all of the oil in that vessel at all times during transport.

(2) A copy of a written statement by the holder of the applicable certificate authorizing its application to the vessel.

(Added by Stats.1990. c. 1248 (S.B.2040), § 17, eff. Sept. 24. 1990, operative Jan. 1, 1992. Amended by Stats.2001, c. 748 (A.B.715), § 32.)

### § 8670.37.52. Effect of certificate

The certificate of financial responsibility shall be conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, marine facility, or oil for purposes of determining liability pursuant to this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

### § 8670.37.53. Qualifications for certificate of financial responsibility

(a) To receive a certificate of financial responsibility for a tank vessel or for all of the oil contained within such a vessel, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay at least one billion dollars ($1,000,000,000) for any damages that may arise during the term of the certificate.

(b) The administrator may establish a lower standard of financial responsibility for small tank barges, vessels carrying oil as a secondary cargo, and small marine fueling facilities. The standard shall be based on the quantity of oil that can be carried or stored and the risk of spill into marine waters. The administrator shall not set a standard that is less than the expected costs from a reasonable worst case oil spill into marine waters.

(c)(1) To receive a certificate of financial responsibility for a marine facility, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay for any damages that might arise during a reasonable worst case oil spill into marine waters that results from the operations of the marine facility. The administrator shall consider criteria including, but not necessarily limited to, the amount of oil that could be spilled into marine waters from the facility, the cost of cleaning up spilled oil, the frequency of operations at the facility, and the damages that could result from a spill.

(2) The administrator may issue a certificate for a marine facility upon a lesser showing of financial resources for a period of not longer than three years if the administrator finds all of the following:

(A) The marine facility was operating on January 1, 1991.

(B) Continued operation is necessary to finance abandonment of the marine facility.

(C) The financial resources the operator is able to demonstrate are reasonably sufficient to cover the damages from foreseeable spills from the facility.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 847 (S.B.1443), §1; Stats.1994, c. 1298 (A.B.3425), § 4; Stats.1995, c. 25 (S.B.153), § 1, eff. June 28, 1995; Stats.2001, c. 748 (A.B.715), § 33.)

**§ 8670.37.54. Evidence of financial responsibility**

(a) For the purposes of this chapter, financial responsibility may be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer, or any combination thereof or other evidence of financial responsibility.

(b) In adopting requirements under this article, the administrator may specify policy or other contractual terms, conditions, or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility, in order to effectuate the purposes of this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.37.55. Multiple vessels or facilities; coverage by certificate**

(a) An owner or operator of more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility shall only be required to obtain one certificate of financial responsibility for all of those vessels and marine facilities owned or operated.

(b) If a person holds a certificate for more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility and a spill or spills occurs from one or more of those vessels or marine facilities for which the owner or operator may be liable for damages in an amount exceeding 5 percent of the financial resources reflected by the certificate, as determined by the administrator, the certificate shall immediately be considered inapplicable to any vessel or marine facility not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the administrator the amount of financial ability required pursuant to this article, as well as the financial ability to pay all damages that arise or have arisen from the spill or spills which have occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 34.)

**§ 8670.37.56. Suspension of certificate**

If the administrator determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for the spill or liability and have resources remaining available to meet the requirements of this chapter, the administrator may suspend the certificate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.37.57. Term of certificate**

No certificate of financial responsibility shall have a term greater than two years. The administrator may issue certificates for shorter periods where appropriate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.37.58. Nontank vessels on marine waters; financial responsibility**

(a) A nontank vessel required to have a contingency plan pursuant to this chapter shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or for a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(c) The administrator may adopt regulations to implement this section.

(Added by Stats.2001, c. 748 (A.B.715), § 35. Amended by Stats.2002, c. 207 (S.B.1513), § 1; Stats.2002, c. 514 (S.B.849), § 1; Stats.2005, c. 147 (A.B.752), § 1.)

**§ 8670.37.58. Nontank vessels on marine waters; certificate of financial responsibility**

***Repealed by Stats.2005, c. 147 (A.B.752), § 2.***

**Prior to Repeal:** (Added by Stats.2001, c. 748 (A.B.715), § 36, operative Jan. 1, 2003. Amended by Stats.2002, c. 207 (S.B.1513), § 2, operative Jan. 1, 2006; Stats.2002, c. 514 (S.B.849), § 2, operative Jan. 1, 2006.)

## Article 6. The Oil Spill Prevention and Administration Fund

**§ 8670.38. Fund created**

(a) The Oil Spill Prevention and Administration Fund is hereby created in the State Treasury. The money in the fund is available for appropriation by the Legislature and may only be used for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) For the purposes of this article, "fund" refers to the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.39. Administration of fund**

(a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.40. Oil spill prevention and administration fee; collection; use**

(a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b)(1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993-94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 7.9 (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

(Added by Stats.1991, c. 10 (S.B.7), § 3.5, eff. Dec. 13, 1990, operative July 1, 1991. Amended by Stats.1991, c. 300 (A.B.1409), § 2, eff. Aug. 1, 1991; Stats.1992, c. 1313, (A.B.3173), § 5, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 4 Stats.2002, c. 512 (A.B.2083), § 1; Stats.2002, c. 514 (S.B.849), § 3.5; Stats 2003, c. 62 (S.B.600), § 111.)

**§ 8670.41. Nontank vessel owners or operators; fee; collection; use**

(a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars ($2,500), or less per vessel.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

(Added by Stats.2002, c. 514 (S.B.849), § 4. Amended by Stats.2004, c. 796 (S.B.1742), § 31.)

**§ 8670.42. Program Assessment Report**

The Department of Fish and Game shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before January 1, 2005, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

(Added by Stats.2002, c. 514 (S.B.849), § 5.)

## Article 7. Oil Spill Response Trust Fund

**§ 8670.46. Fund created**

(a) The Oil Spill Response Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340, the money in the fund is continuously appropriated to the administrator for expenditure, without regard to fiscal years, for the purposes of this article.

(b) For the purposes of this article, "fund" refers to the Oil Spill Response Trust Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.47. Administration of fund**

(a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(c) The administrator is responsible for ensuring that there are adequate moneys available in the fund to carry out the purposes of this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff . Sept. 24, 1990.)

**§ 8670.47.5. Deposits into fund**

The following * * * shall be deposited into the fund:

(a) The fee required pursuant to Section 8670.48.

(b) Any federal funds received to pay for response, containment, abatement, and rehabilitation costs from an oil spill in marine waters.

(c) Any <u>money</u> borrowed <u>by the Treasurer</u> pursuant to Article 7.5 (commencing with Section 8670.53.1) <u>or any draw on the financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48</u>.

(d) Any interest earned on the moneys in the fund.

(e) Any * * * <u>costs recovered</u> from responsible parties pursuant to Section 8670.53 <u>and subdivision (e) of Section 8670.53.1</u>.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2007, c. 373 (A.B.1220), § 5, eff. October 10, 2007.)

**§ 8670.48. Uniform oil spill response fee; collection; refunds; interest earned on funds**

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

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

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

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

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

(3) For purposes of this chapter, "independent crude oil producer" means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

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

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

(f)(1) The fees required pursuant to this section shall be collected during any period * * * <u>for which</u> the administrator determines that * * * <u>collection is necessary for any of the following reasons:</u>

<u>(A) T</u>he amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code* * *<u>.</u>

<u>(B) A</u>dditional money is required to pay for the purposes specified in subdivision (k).

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

<u>(2) The administrator, in consultation with the State Board of Equalization, and with the approval of</u> the Treasurer* * *<u>, may direct the State Board of Equalization to cease collecting the fee when</u> the administrator * * * <u>determines that further collection</u> of the fee is not <u>necessary</u> for the purposes specified in paragraph * * *<u>(1)</u>.

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount <u>specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code</u> within four months. The fee shall not be less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil <u>if the administrator has drawn upon the financial security obtained by the Treasurer pursuant to subdivision (o) or</u> if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind <u>incurred</u> in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not <u>necessary</u> for the purposes specified in paragraph * * *<u>(1)</u>.

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

(h) For purposes of this chapter, "designated amount" means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator, in consultation with the State Board of Equalization and with the approval of the Treasurer, shall authorize refunds of any money collected * * * that is not necessary for the purposes specified in paragraph (1) of subdivision (f). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of excess fees as provided in this subdivision more frequently than once each year.

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

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

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

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

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

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

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

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

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

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

(l)(1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code. Interest earned until July 1, 1998, on funds deposited pursuant to subdivision (a) of Section 46012 of the Revenue and Taxation Code, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, required to be accessible pursuant to subdivision (b) of Section 46012 of the Revenue and Taxation Code shall not be available for that purpose. If the amount in the fund exceeds that designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2)(A) For each fiscal year, consistent with this article, the administrator shall submit * * *, as a proposed appropriation in the Governor's Budget, an amount up to one million five hundred thousand dollars ($1,500,000), of the interest earned on the funds deposited into the Oil Spill Response Trust

Fund, for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. * * *The remaining interest shall be deposited into the Oil Spill Prevention and Administration Fund pursuant to paragraph (1).

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

(C) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out that purpose. The administrator shall attempt to have an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

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

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

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

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

(p) Nothing in this section limits the authority of the administrator to raise oil spill response fees pursuant to Section 8670.48.5.

(Added by Stats.1991, c. 10 (S.B.7), § 4.5, eff. Dec. 13, 1990, operative July 1, 1991. Amended by Stats.1991, c. 300 (A.B.1409), § 3, eff. Aug. 1, 1991; Stats.1992, c. 1312 (A.B.2912), § 4, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 5; Stats.1993, c. 1190 (S.B.171), § 2, eff. Oct. 11, 1993; Stats.1993, c. 1202 (S.B.775), § 2.5; Stats.1995, c. 940 (A.B.1549), § 5; Stats.1996, c. 362 (A.B.748), § 2; Stats.2004, c. 796 (S.B.1742), § 32; Stats.2007, c. 373 (A.B.1220), § 6, eff. October 10, 2007.)

(Former § 8670.48: (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990, amended by Stats.1991, c. 10 (S.B.7), § 4, eff. Dec. 13, 1990. **Repealed.**)

### § 8670.48.5. Increase of fees; grounds

(a) The administrator may raise the fees specified in Section 8670.48 to a maximum of one dollar ($1) per barrel, provided that the fee may only be raised by maximum increments of twenty-five

cents ($0.25) not more frequently than once every three months. The administrator shall raise the fee only upon making all of the following findings:

(1) * * *There have been, or are existing, demands for expenditures from the fund for allowable purposes that have severely depleted or exhausted, or will severely deplete or exhaust, the fund.

(2) The Governor has requested the Treasurer to borrow the moneys and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet the reasonably anticipated demands on the fund for authorized expenditures, including providing moneys for the costs of response, containment, and cleanup of oil spills, damage assessment costs, wildlife rehabilitation, emergency loans, and damage claims, * * *and to repay those borrowings, or the Treasurer finds that the fee is insufficient to repay and secure existing draws by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48 or borrowings by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(3) Failure to raise the fee in the amount proposed will result in unmet * * *-or unpaid, authorized expenditures or noncompliance with any resolutions or contracts entered into in connection with obtaining the financial security pursuant to subdivision (o) of Section 8670.48 or borrowings by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(b) At least 30 days prior to the day the increased fee shall be effective, the administrator shall inform the Legislature of his or her intent to raise the fee.

(c) * * *Each incremental increase shall be effective until the later of (1) the delivery by the Treasurer of a certificate to the administrator as authorized by subdivision (f) of Section 8670.53.3 or (2) the expiration date established by the administrator not to exceed one year. The increase may be renewed by the administrator before its expiration upon making the findings required by subdivision (a).

(d) It is the intent of the Legislature that the fund shall not be used for any purpose other than those set forth in this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 5, eff. Sept. 30, 1992; Stats.1993, c. 1190 (S.B.171), § 3, eff. Oct. 11, 1993; Stats.2007, c. 373 (A.B.1220), § 7, eff. October 10, 2007.)

**§ 8670.49. Expenditure of fund money; conditions**

(a)(1) The administrator may only expend money from the fund to pay for any of the following, subject to the lien established in Section 8670.53.2:

* * * (A) To pay * * *the cost of obtaining financial security as authorized by paragraph (5) of subdivision (k) and subdivision (o) of Section 8670.48.

(B) To pay the principal, interest, premium, if any, and fees, charges, and costs of any kind incurred in connection with moneys drawn by the administrator on the financial security obtained by the Treasurer, or the moneys borrowed by the Treasurer, as authorized by paragraph (7) of subdivision (k) of Section 8670.48.

(C) To pay for the construction, equipping, operation, and maintenance of rescue and rehabilitation facilities, and technology development for oiled wildlife care from interest earned on money deposited in the fund as authorized by subdivision (l) of Section 8670.48* * *.

(D) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations pursuant to subdivision (f) of Section 8670.37.5* * *.

(E) To pay for the expansion, in the VTS area, pursuant to Section 445 of the Harbors and Navigation Code, of the vessel traffic service system (VTS system) authorized pursuant to subdivision (f) of Section 8670.21.

(2) If a spill has occurred, the administrator may * * * expend the money in the fund * * * for the purposes identified in paragraphs (1), (2), (3), (4), and (6) of subdivision (k) of Section 8670.48 only upon making the following determinations* * *:

(A) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spill. The administrator shall make a reasonable effort to have the party responsible remove the oil or agree to pay for any actions resulting from the spill that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(B) Sufficient federal oil spill funds are not available or will not be available in an adequate period of time.

(3) Notwithstanding any other provision of this subdivision, the administrator may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements for those expenditures from federal oil spill funds.

(b) Upon making the determinations specified in paragraph (2) of subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up, the spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1, subject to the lien established by Section 8670.53.2.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 6, eff. Sept. 30, 1992; Stats.1992, c. 1313 (A.B.3173), § 6, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 6; Stats.1993, c. 1190, (S.B.171), § 4, eff. Oct. 11, 1993; Stats.1993, c. 1202 (S.B.775), § 3.5; Stats.1995, c. 940 (A.B.1549), § 6; Stats.1996, c. 362 (A.B.748), § 3; Stats.2007, c. 373 (A.B.1220), § 8, eff. October 10, 2007.)

**§ 8670.50. Purposes of expenditures; necessary expenditures in event of oil spill**

(a) Money from the fund may only be expended to cover the costs incurred by the state and local governments and agencies for any of the following:

(1) Responding promptly to, containing, and cleaning up the discharge, if those efforts are any of the following:

(A) Undertaken pursuant to the state and local oil spill contingency plans established under this chapter, and the marine response element of the California oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7* * *.

(B) Undertaken consistent with the standardized emergency management system established pursuant to Section 8607.

(C) Undertaken at the direction of the administrator.

(2) Meeting the requirements of Section 8670.61.5, relating to wildlife rehabilitation.

(3) Making the payments authorized by subdivision (k) of Section 8670.48.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a), subject to the lien established pursuant to Section 8670.53.2.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 7, eff. Sept. 30, 1992; Stats.2004, c. 796 (S.B.1742), § 33; Stats.2007, c. 373 (A.B.1220), § 9, eff. October 10, 2007.)

**§ 8670.51. Payment of unenforced judgments; subrogation of claims; claims against fund**

(a) When a person has obtained a final judgment for damages resulting from an oil spill in marine waters, but is unable, within one year after the date of its entry, to enforce the judgment pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure, or is unable to obtain satisfaction of the judgment from the federal government within 90 additional days, the administrator shall pay an amount not to exceed those amounts which cannot be recovered from a responsible party

and the fund shall be subrogated to all rights, claims, and causes of action that the claimant has under this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, Section 8670.61.5, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) Any person may apply to the fund for compensation for damages and losses suffered as a result of an oil spill in marine waters under any of the following conditions:

(1) The responsible party or parties cannot be ascertained.

(2) A responsible party is not liable for noneconomic damages caused by another.

(3) Subdivision (i) of Section 8670.56.6 is applicable to the claim.

(c) The administrator shall not approve any claim in an amount which exceeds the amount to which the person would otherwise be entitled pursuant to Section 8670.56.5, and shall pay claims from the fund which are approved pursuant to this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.51.1. Designation of responsible party; notice; payment of claims; federal payments**

(a)(1) Upon learning of an oil spill, the administrator shall immediately designate the responsible party, who, if that designation is not challenged, shall immediately, widely advertise the manner in which it shall accept and pay claims.

(2) If the designation of the administrator is challenged, the administrator shall immediately, widely advertise the manner in which he or she shall accept, process, and pay claims. If the administrator's designation is later upheld, all costs incurred by the administrator, including interest and appropriate penalties, shall be assessed against the responsible party.

(3) If the administrator is unable to designate a responsible party, the administrator shall immediately, widely advertise the manner in which the administrator shall accept, process, and pay claims. In the absence of a designated responsible party the claimant shall submit his or her claim to the federal fund. If there is no response within 60 days, the claimant may submit his or her claim to the fund.

(b) Claims under the amount of fifty thousand dollars ($50,000) may be submitted directly to the fund. The claimant shall not be required to make a demand on the responsible party or any federal fund. It is the intent of the Legislature that these claims be processed as expeditiously as possible, and the administrator shall contract with professional adjusters to handle the claims as fairly and professionally as possible. Claimants shall assign or subrogate all rights against the responsible party to the fund before payment and release.

(c) Claims in excess of the amount of fifty thousand dollars ($50,000) shall first be presented to the designated responsible party for payment. If a satisfactory response is not forthcoming within 60 days, the claimant shall submit his or her claim to the appropriate federal fund. If a satisfactory response is not forthcoming from the appropriate federal fund within 60 days, the claimant may submit the claim to the fund. If the administrator does not designate a responsible party, the claim shall be submitted directly to the appropriate federal fund.

(d)(1) If the federal fund completely rejects a claim, makes a partial offer, or the claimant rejects an offer, the claimant may, nevertheless, apply for reimbursement from the fund, provided that all evidence developed during the federal fund process shall be admissible during the processing of the claim. The administrator shall specifically consider any federal offer.

(2) Any federal payment shall be offset against any payment from the fund.

(3) The claimant shall assign or subrogate all rights under federal law to the fund. Any payment of claims from the fund shall require assignment or subrogation of the claimant's rights under state law to the fund.

(e) The administrator may levy fines against frivolous claims pursuant to Section 128.5 of the Code of Civil Procedure.

(f) Entities that pay into the fund shall have no standing to contest claims against the fund for claims less than one million dollars ($1,000,000). The entities may petition the administrator to have standing for claims between one million dollars ($1,000,000) and three million dollars ($3,000,000). The entities shall have standing for claims in excess of three million dollars ($3,000,000).

(g) An advisory committee comprised of entities that pay into the fund and other interested parties shall be created and the administrator shall consult with the committee on the manner in which payments are made from the fund.

(h) Claims for reimbursement from the fund shall be made within three years from the date the loss occurred.

(i) Dissatisfied claimants may sue the fund within six months of the administrator's final decision regarding a claim.

(j) The administrator shall develop and adopt regulations regarding the manner in which claims shall be required to be submitted, processed, heard, and challenged.

(k) Punitive damages shall not be paid from the fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1993, c. 1190 (S.B.171), § 5, eff. Oct. 11, 1993.)

**§ 8670.52. Emergency loans**

***Repealed by Stats.2004, c. 796 (S.B.1742), § 34.***

**Prior to Repeal:** (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 4, 1990.)

**§ 8670.53. Recovery of expenditures from fund**

The Attorney General, in consultation with the administrator, shall undertake actions to recover all costs to the funds from any responsible party for an oil spill into marine waters for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the Attorney General from any other actions allowed by law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

## Article 7.5. Borrowing Authority

**§ 8670.53.1. Costs exceeding fund amount or financial ability of responsible party; borrowed funds; liability**

(a) * * *Following an oil spill * * *, the administrator * * *, in consultation with the Treasurer, shall notify the Governor if the administrator determines that it is likely that there will not be sufficient moneys in the fund, including both projected revenues to the fund and the financial security obtained pursuant to subdivision (o) of Section 8670.48, to pay, in a timely manner, the expected costs permitted under this chapter.

(b) Following an oil spill, if the Treasurer has obtained financial security pursuant to subdivision (o) of Section 8670.48 in the form of a loan from the Pooled Money Investment Account, the Treasurer shall notify the Governor if the draws on the financial security will likely create a cashflow problem for the Pooled Money Investment Account that would require the loan to be repaid and replaced by borrowing from another source.

(c) Upon notification pursuant to subdivision (a) or (b), the Governor shall request that the federal government pay the cost for response, containment, cleanup, wildlife rehabilitation, and payment of damages. If sufficient federal funds are not available within five days, the Governor shall make a written request to the Treasurer to borrow and deposit in the fund the amount * * * necessary, as determined by the administrator, to pay those estimated excess response costs, including costs

specified in paragraphs (1), (2), (3), (4), * * *(6), and (8) of subdivision (k) of Section 8670.48, * * * and, if necessary, to repay any draws upon the financial security obtained by the Treasurer pursuant to * * * subdivision (o) of Section 8670.48.

(d) The Governor, the Controller, the Treasurer, and the administrator shall immediately take whatever action is necessary and appropriate to ensure that the state has the ability to borrow the maximum additional amount necessary to carry out this chapter.

(e) The party responsible for the spill shall be liable to the state for all money borrowed by the Treasurer under this chapter, including draws on the financial security obtained pursuant to subdivision (o) of Section 8670.48, for the purpose of responding to the oil spill, including principal, interest, and premium, if any, and all associated fees, costs, and other charges incurred by the state in connection with that borrowing, whether or not all or a portion of the borrowed money has been repaid through the oil spill response fee or by federal funds.

(f) No funds available pursuant to this article may be expended for any activities which result in a net environmental enhancement. It is the intent of the Legislature that borrowed funds be expended solely for oil spill response, containment, cleanup, wildlife rehabilitation, and damages resulting from oil spills.

(Formerly § 8670.53.15. Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Renumbered § 8670.53.1 and amended by Stats.1992, c. 1312 (A.B.2912), § 8, eff. Sept. 30, 1992; Stats.2007, c. 373 (A.B.1220), § 10, eff. October 10, 2007.)

**§ 8670.53.2. Manner of expenditure and repayment of borrowed funds; liens created**

Money borrowed pursuant to this * * * chapter, including draws on the financial security obtained pursuant to subdivision (o) of Section 8670.48, shall be expended and repaid pursuant to Sections 8670.48 and 8670.49. So long as any of those borrowings are outstanding, fees and any other moneys in the fund are pledged to the repayment of the borrowings, to the extent provided in a resolution of the Pooled Money Investment Board in connection with a loan from the Pooled Money Investment Account or a resolution of issuance * * * for any other borrowing arranged by the Treasurer. The pledge shall constitute a first lien and security interest, ratably with all other prior or subsequent borrowings unless the Treasurer provides in a resolution of issuance, that any borrowing shall constitute a junior lien, which shall immediately attach on the fees deposited in the fund, and shall be effective, binding, and enforceable against the state and any other person asserting rights therein without need of any physical delivery, recordation, filing, or other action.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 11, eff. October 10, 2007.)

**§ 8670.53.3. Financial arrangements to obtain needed money; request from governor; increase in fees**

(a) For purposes of this section, the following definitions shall apply:

(1) "Bond" means any bond, note, commercial paper, bond anticipation note, or other evidence of indebtedness that the Treasurer is authorized to issue for purposes of this chapter.

(2) "Standby arrangement" means a line of credit, letter of credit, or other financial arrangement with a financial institution or lending entity that allows for ready access to money.

(b) To provide funds to pay for costs of an oil spill, as set forth in Section 8670.48, in excess of money in the fund as set forth in subdivision (a) of Section 8670.53.1, the Treasurer shall make necessary financial arrangements to obtain the additional money needed to pay those costs, * * * and that borrowing shall be reimbursed or repaid from future deposits into the fund. The Treasurer may also enter any financial arrangement necessary or appropriate to refund any draw by the administrator pursuant to subdivision (o) of Section 8670.48, and that borrowing shall be reimbursed or repaid from future deposits into the fund. The financial arrangements may take the following forms, or any combination thereof:

(1) Establishment of * * * one or more * * * standby * * * arrangements.

(2) Sale of bonds * * * to provide funds for purposes of this chapter, to repay any prior drawings by the Treasurer on a standby arrangement or any drawings by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48, to repay money borrowed from the Pooled Money Investment Account, or to refund or extend any previously issued bonds.

(3) Borrowing from the Pooled Money Investment Account.

(4) Any other financial arrangement the Treasurer determines to be appropriate and cost effective.

(c) The Treasurer may enter into any financial arrangement authorized in subdivision (b) at any time, or from time to time, on a negotiated or competitive bid basis, as the Treasurer shall determine to be advisable.

(d)(1) The Governor * * *, in any written request to the Treasurer * * * pursuant to * * * subdivision (c) of Section * * * 8670.53.1, shall, to the extent feasible, state both of the following:

(A) The amount of funds needed each month over the period covered by the request.

(B) The estimated income to the fund each month from all sources that will be available to pay or retire any debt service or to pay any other expenses, fees, or costs incurred in connection with obligations issued pursuant to this chapter.

(2) The Governor may submit multiple requests to the Treasurer with respect to the same oil spill, or with respect to different oil spills. On receipt of a written request pursuant to this section, the Treasurer may draw on a standby arrangement, may use any other financial arrangement, or may issue bonds * * * to provide funds not exceeding the amounts requested.

(e) Upon receipt of a written request for funds from the Governor, the following shall occur:

(1) The Treasurer shall convene a meeting of the Pooled Money Investment Board * * * to obtain the funds through interim borrowing from the Pooled Money Investment Account except that no meeting is required where the request to borrow is for the purpose of repayment of a loan from the Pooled Money Investment Account.

(2) The Treasurer shall ensure that the funds will thereafter be available in accordance with a financing schedule mutually agreeable to the administrator and the Treasurer.

(f) This article does not require the Treasurer to borrow more money than can be repaid from amounts available to the fund for that purpose. The Treasurer shall not be required to* * * consider as available to the fund any future deposits resulting from an increase of the fees specified in Section 8670.48.5 until that increase has actually become effective. Once effective, the administrator shall not retract, reduce, or reject the increase unless the Treasurer certifies to the administrator that the retraction, reduction, or rejection will not diminish the security for, or ability to repay, amounts borrowed under this article or drawn pursuant to subdivision (o) of Section 8670.48. The amount of borrowing that can be repaid from amounts available to the fund for that purpose shall be determined by the Treasurer in his or her sole discretion, giving due consideration to factors concerning security for, * * * marketability of, * * * and repayment of, any financial arrangements or other obligations that the Treasurer elects to make, incur, or issue for the purposes of complying with this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 9; Stats.2007, c. 373 (A.B.1220), § 12, eff. October 10, 2007.)

**§ 8670.53.4. Resolution to authorize financial arrangement**

(a) With the exception of borrowing from the Pooled Money Investment Account, which shall be on the terms determined by the Pooled Money Investment Board, the entry into or issuance of any financial arrangement * * * pursuant to this article and obtaining the financial security pursuant to subdivision (o) of Section 8670.48, including the issuance of bonds, or other obligations, shall be authorized by a resolution adopted by the Treasurer. Any of these financial * * * arrangements, including bonds or other obligations, (1) may be negotiable, (2) may be payable to order or to the bearer, (3) may

be in any denomination, (4) shall be payable not later than 20 years from the date of issuance, (5) may bear interest at a fixed or variable rate or rates to be determined as provided by the resolution and payable as provided therein, (6) may be payable on a fixed date or upon demand of the holder, (7) may be made subject to the prepayment or redemption at the option of the state or at the option of the holder, and (8) may contain such other terms as the Treasurer may determine to be necessary and appropriate.

(b) In connection with any financial arrangement * * * made or issued by the Treasurer pursuant to this * * * chapter, including the issuance of bonds or other obligations, the Treasurer may obtain or arrange for any insurance, letter of credit, or other credit enhancement or liquidity arrangements as the Treasurer determines to be appropriate and cost effective, and may enter into any contracts or agreements for those arrangements not inconsistent with this chapter.

(c) Proceeds of * * * any borrowing authorized pursuant to this chapter, including from the issuance of any bonds, other obligations, or drawings on any standby arrangement or other financial arrangements, shall be deposited in the fund.

(d) Any bonds or other obligations issued under this chapter may be secured by a trust agreement or indenture by and between the state and a trustee. The trustee may be the Treasurer or a bank or trust company chartered under the laws of this state or of the United States and designated by the Treasurer.

(e) The Treasurer may provide for the issuance and sale or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing for retirement, outstanding bonds at or before their maturity, if the Treasurer and the administrator determines that refunding is necessary or advisable in order to do either of the following:

(1) To effect a favorable reorganization of the debt structure of the bonds.

(2) To effect a saving in debt service cost, as measured by the present value of that saving.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 13, eff. October 10, 2007.)

**§ 8670.53.5. Liability of state for financial arrangements**

Any financial arrangements made or issued pursuant to this article or subdivision (o) of Section 8670.48, including the issuance of bonds or other obligations, and the repayment of any * * * of these obligations, shall be special obligations of the state secured solely by the moneys in the fund. * * *None of these financial * * * arrangements, including bonds or other obligations, shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. * * *Each of these financial * * * arrangements, including bonds or other obligations, shall contain a recital stating that neither the payment of the principal thereof, nor any interest thereon, constitutes a debt, liability, or general obligation of the State of California other than as provided in this article, and neither the faith and credit nor the taxing power of the state are pledged to the repayment thereof.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 14, eff. October 10, 2007.)

**§ 8670.53.7. Bonds; legal investment for specified purposes**

(a) All * * * financial arrangements made or issued pursuant to this article or subdivision (o) of Section 8670.48, including bonds or other obligations, are a legal investment for any of the following:

(1) Trust funds.

(2) Funds of insurers.

(3) Funds of savings and loan associations.

(4) Funds of banks.

(5) Funds of state agencies, cities, counties, cities and counties, or other public agencies or corporations.

(b) * * *All financial arrangements, made or issued * * * pursuant to this article or subdivision (o) of Section 8670.48, including bonds or other obligations, are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of notes by banks as security for deposits of funds of the state and its agencies, or of any city, county, city and county, or other public agency or corporation.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 15, eff. October 10, 2007.)

**§ 8670.53.8. Appropriations from fund**

Notwithstanding Section 13340, there is hereby appropriated from the fund, without regard to fiscal years, any and all moneys necessary to pay * * * principal, * * * interest, * * * premium, if any, * * * and fees, costs, or charges of any kind incurred by the state under or in connection with any standby arrangement, or other financial arrangement, including bonds or other obligations, made or issued pursuant to this article and pursuant to subdivision (o) of Section 8670.48, or * * * any rebate penalty, or other payment necessary to maintain the federal tax-exempt status of * * * that financial arrangement, including bonds or other obligations. The Treasurer shall advise the administrator and the Controller of amounts * * *necessary to pay the principal, interest, premiums, * * * fees * * *, costs, or charges on any of those arrangements or obligations made or issued pursuant to this article and subdivision (o) of Section 8670.48, and those amounts shall not be available for expenditure for other purposes.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 16, eff. October 10, 2007.)

**§ 8670.53.9. Legal opinions regarding arrangements**

Whenever the Treasurer determines that it will increase the marketability or reduce the cost of obtaining any standby arrangement, other arrangement, or of issuing any bonds to obtain, prior to or after sale, a legal opinion as to the validity of the standby arrangement, other arrangement, or bonds from attorneys other than the Attorney General, the Treasurer may obtain such a legal opinion.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.53.95. Approval of contracts; application of Public Contract Code**

Section 10295 and Sections 10336 to 10381, inclusive, of the Public Contract Code shall not apply to agreements entered into by the Treasurer in connection with * * * making or issuing of any financial arrangements, including the issuance of bonds or other obligations, authorized by this article or by subdivision (o) of Section 8670.48.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17. Amended by Stats.2007, c. 373 (A.B.1220), § 17, eff. October 10, 2007.)

## Article 8. Oil Spill Technical Advisory Committee

**§ 8670.54. Committee established; appointment of members**

(a) The Oil Spill Technical Advisory Committee, hereafter in this article the committee, is hereby established to provide public input and independent judgment of the actions of the administrator and the State Interagency Oil Spill Committee. The committee shall consist of ten members, of whom six shall be appointed by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. The appointments shall be made in the following manner:

(1) The Speaker of the Assembly and Senate Rules Committee shall each appoint members who shall be representatives of the public.

(2) The Governor shall appoint a member who has a demonstrable knowledge of marine transportation.

(3) The Speaker of the Assembly and the Senate Rules Committee shall each appoint a member who has demonstrable knowledge of environmental protection and the study of ecosystems.

(4) The Governor shall appoint a member who has served as a local government elected official or who has worked for a local government.

(5) The Governor shall appoint a member who has experience in oil spill response and prevention programs.

(6) The Governor shall appoint a member who has been employed in the petroleum industry.

(7) The Governor shall appoint a member who has worked in state government.

(8) The Governor shall appoint a member who has demonstrable knowledge of the dry cargo vessel industry.

(b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars ($100) per day for each meeting and all necessary travel expenses at state per diem rates.

(c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.

(d) A chairman and vice chairman shall be elected by a majority vote of the committee.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2002, c. 514 (S.B.849), § 6)

**§ 8670.55. Recommendations from committee; studies**

(a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report biennially to the Governor and the Legislature on its evaluation of oil spill response and preparedness programs within the state and may prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

(e) On or before August 1, 2005, the committee shall review the Department of Finance report required under Section 8670.42 and prepare and submit to the Governor and the Legislature comments on the report, including, but not limited to, recommendations for improving the state's oil spill prevention, response, and preparedness program.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 745, (S.B.1191), § 74; Stats.2001, c. 748 (A.B.715), § 37; Stats.2002, c. 514 (S.B.849), § 7.)

**§ 8670.56. Funding**

The administrator may expend from the Oil Spill Prevention and Administration Fund any amounts necessary for the purposes of carrying out this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.56.1. Committee members; immunity from liability**

(a) The Legislature hereby finds and declares that because the administrator must rely on expertise provided by members of the committee and be guided by their recommendations in making decisions that relate to the public safety, members of the committee should be entitled to the same immunity from liability provided other public employees.

(b) Members of the committee appointed pursuant to this article, while performing duties required by this article or by the administrator, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the committee.

(Added by Stats.1995, c. 337 (A.B.1742), § 9.)

**Article 8.5. Damages**

**§ 8670.56.5. Liability of responsible party; actions; costs and attorneys' fees; recoverable damages**

(a) Any responsible party, as defined in Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) The defenses provided in subdivision (b) shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(d) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(e) In determining whether a party is a responsible party under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(f) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(g) This section does not prohibit any person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(h) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the California oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources that have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in any action brought by the state, a county, city, or district.

(i) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(k) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(l) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a private individual or entity which requests the state not to pursue that action.

(m) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 337 (A.B.1742), § 10; Stats.2001, c. 748 (A.B.715), § 38; Stats.2004, c. 796 (S.B.1742), § 35.)

**§ 8670.56.6. Immunity for actions taken in compliance with contingency plan; liability of responsible party; indemnification agreements**

(a)(1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall not apply to any oil spill response action that is inconsistent with the following:

(A) The directions of the unified command, consisting of at least the Coast Guard and the administrator.

(B) In the absence of a unified command, the directions of the administrator pursuant to Section 8670.27.

(C) In the absence of directions pursuant to subparagraph (A) or (B), applicable oil spill contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the vessel, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, or the responsible party's agents, employees, or subcontractors, except persons immunized under subdivision (a) for response efforts, for the discharged oil, or for the vessel, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall be subject to both of the following:

(1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5, or any other provision of law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (h) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.

(e) This section does not apply to any action for personal injury or wrongful death.

(f) As used in this section, a "cooperative" means an organization of private persons which is established or the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spill.

(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j)(1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in paragraph (1), the administrator may also negotiate and enter into indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(4)(A) The contracts required by this section, and any other contracts entered into by the administrator for response, containment, or cleanup of an existing spill, the payment of which is to be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46, or for response to an imminent threat of a spill, the payment of which is to be made out of the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(B) The exemption specified in subparagraph (A) applies only to contracts for which the services are used for a period of less than 90 days, cumulatively, per year.

(C) This paragraph shall not be construed as limiting the administrator's authority to exercise the emergency powers granted pursuant to subdivision (c) of Section 8670.62, including the authority to enter into emergency contracts that are exempt from approval by the Department of General Services.

(k)(1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public health and safety or harm the environment.

(B) The remaining work is of a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to those response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of any person who is not regularly engaged in the business of responding to oil spills. A person who is not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) a person who is primarily dedicated to the preservation and rehabilitation of wildlife and (B) a person who derives his or her livelihood primarily from fishing.

(l) As used in this section, "response efforts" means rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill into marine waters.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1991, c. 300 (A.B.1409), § 4, eff. Aug. 1, 1991; Stats.1992, c. 1312 (A.B.2912), § 10, eff. Sept. 30, 1992; Stats.1992, c. 1313 (A.B.3173), § 7, eff. Sept. 30, 1992; Stats.1993, c. 1202 (S.B.775), § 4; Stats.2001, c. 748 (A.B.715), § 39; Stats.2004, c. 796 (S.B.1742), § 36.)

**§8670.56.7. Limited liability of nonprofit maritime association; spill response services**

***Repealed by Stats.2007, c. 373 (A.B.1220), § 18, eff. Oct. 10, 2007.***

**Prior to Repeal:** (Added by Stats.2001, c. 748 (A.B.715), § 40.)

## Article 9. Enforcement

**§ 8670.57. Injunctions**

(a) When the administrator determines that any person has engaged in, is engaged in, or threatens to engage in, any acts or practices which constitute a violation of any provision of this chapter, Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any rule, regulation, permit, or order issued, promulgated, or executed thereunder, and when requested by the administrator, the district attorney of the county in which those acts occur or occurred, or the Attorney General, may make application to the superior court for an order enjoining the acts or practices, or for an order directing compliance. Upon a showing by the administrator that the person has engaged in, is engaged in, or threatens to engage in any violation of the act, a permanent or preliminary injunction, restraining order, or other order may be granted.

(b) For the purposes of this section, "threaten" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.58. Civil actions**

Every civil action commenced pursuant to this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code at the request of the administrator shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same event, transaction, or occurrence may be joined or consolidated.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.59. Venue; limitation of actions**

(a) Any civil action brought pursuant to this chapter, or pursuant to Division 7.8 (commencing with Section 8750) of the Public Resources Code, shall be brought in the county in which the spill, discharge, or violation occurred, the county in which the principal place of business of the defendant is located, or the county in which the defendant is doing business in this state.

(b)(1) Notwithstanding any other provision of law, all criminal actions for the prosecution of misdemeanor violations of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be commenced within one year from the date of the discovery of the facts or circumstances which constitute the violation.

(2) Notwithstanding any other provision of law, all criminal actions for the prosecution of felony violations of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be commenced within three years from the date of the discovery of the facts or circumstances which constitute the violation.

(c) Notwithstanding any other provision of law, except as provided in subdivision (d), any action to recover civil damages or penalties shall be commenced within three years from the date of discovery of the facts or circumstances which constitute a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(d) Any action to recover civil damages or penalties pursuant to paragraph (3), (4), (5), (6), or (7) of subdivision (g) of Section 8670.56.5 because of effects on natural resources shall be commenced within five years from the date of the discovery of the facts or circumstances which are the basis for the cause of action.

(e) Any action to compel the removal of oil or the restoration and rehabilitation of wildlife and wildlife habitat shall be commenced within five years from the date of discovery of the facts or circumstances which constitute a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(f) For purposes of subdivisions (b), (c), (d), and (e), "date of discovery" means the actual date that facts sufficient to establish that a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code has occurred are discovered by a peace officer appointed pursuant to Section 851 of the Fish and Game Code.

(g) The administrator may adopt regulations prescribing procedures for the implementation of this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1993, c. 1190 (S.B.171), § 6, eff. Oct. 11, 1993; Stats.1994, c. 613 (S.B.1720), § 1.)

**§ 8670.61. Cumulative remedies**

The civil and criminal penalties provided in this chapter and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be separate and in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.61.5. Wildlife rehabilitation; plans**

(a) For purposes of this chapter, "wildlife rehabilitation" means those actions that are necessary to fully mitigate for the damage caused to wildlife, fisheries, wildlife habitat, and fisheries habitat, including beaches, from the spill of oil into marine waters.

(b) Responsible parties shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation shall be provided by successfully carrying out environmental projects or funding restoration activities required by the administrator in carrying out projects complying with the requirements of this section. Responsible parties are also liable for the costs incurred by the administrator or other government agencies in carrying out this section.

(c) If any significant wildlife rehabilitation is necessary, the administrator may require the responsible party to prepare and submit a wildlife rehabilitation plan to the administrator. The plan shall describe the actions that will be implemented to fully meet the requirements of subdivision (b), describe contingency measures which will be carried out in the event that any of the plan actions are not fully successful, provide a reasonable implementation schedule, describe the monitoring and compliance program, and provide a financing plan. The administrator shall review and determine whether to approve the plan within 60 days of submittal. Before approving a plan, the administrator shall first find that the implementation of the plan will fully mitigate the adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. If the habitat contains beaches that are or were used for recreational purposes, the Department of Parks and Recreation shall review the plan and provide comments to the administrator.

(d) The plan shall place first priority on avoiding and minimizing any adverse impacts. For impacts that do occur, the plan shall provide for full onsite restoration of the damaged resource to the extent feasible. To the extent that full onsite restoration is not feasible, the plan shall provide for offsite in-kind mitigation to the extent feasible. To the extent that adverse impacts still have not been fully mitigated, the plan shall provide for the enhancement of other similar resources to the extent necessary to meet the requirements of subdivision (b). In evaluating whether a wildlife rehabilitation plan is adequate, the administrator may use the habitat evaluation procedures established by the United States Fish and Wildlife Service or any other reasonable methods as determined by the Director of Fish and Game.

(e) The administrator shall prepare regulations to implement this section. The regulations shall include deadlines for the submittal of plans. In establishing the deadlines, the administrator shall consider circumstances such as the size of the spill and the time needed to assess damage and mitigation.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 37.)

**§ 8670.62. Cleanup and abatement orders; failure to comply; liability for costs; failure to identify responsible party**

(a) Any person who discharges oil into marine waters, upon order of the administrator, shall do all of the following:

(1) Clean up the oil.

(2) Abate the effects of the discharge.

(3) In the case of a threatened discharge, take other necessary remedial action.

(b) Upon failure of any person to comply with a cleanup or abatement order, the Attorney General or a district attorney, at the request of the administrator, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(c) Consistent with the state contingency plan, the administrator may expend available money to perform any response; containment; cleanup; wildlife rehabilitation, which includes assessment of resource injuries and damages, or remedial work required pursuant to subdivision (a) which, in the administrator's judgment, is required by the circumstances or the urgency of prompt action required to prevent pollution, nuisance, or injury to the environment of the state. The action may be taken in default of, or in addition to, remedial work by the responsible party or other persons, and regardless of whether injunctive relief is sought. The administrator may perform the work in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the administrator may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(d) If the discharge is cleaned up, or attempted to be cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharged the oil, or threatened to cause or permit the discharge of the oil within the meaning of subdivision (a), shall be liable to that governmental agency for the reasonable costs actually incurred in cleaning up that waste, abating the effects thereof, or taking other remedial action. The amount of the costs shall be recoverable in a civil action by, and paid to, the applicable governmental agency and the administrator, to the extent the administrator contributed to the cleanup costs from the Oil Spill Response Trust Fund or other available funds.

(e) If, despite reasonable effort by the administrator to identify the party responsible for the discharge of oil or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the administrator shall not be required to issue an order under this section. The absence of a responsible party shall not in any way limit the powers of the administrator under this section.

(f) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 940 (A.B.1549), § 7.)

**§ 8670.63. Attorney general; enforcement authority**

No provision of this chapter, or of Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any ruling of the administrator, shall be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the administrator, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of this act, seek necessary remedial action by any person who violates any of the provisions of this act, or seek civil and criminal penalties against any person who violates any of the provisions of this act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.64. Prohibited acts; penalties**

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

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

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

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

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

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

(c)(1) Any person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both the fine and imprisonment:

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

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

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

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

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 337 (A.B.1742), § 11; Stats.2001, c. 748 (A.B.715), § 41.)

**§ 8670.65. Violations of chapter or regulations; penalties**

Except as otherwise provided in Section 8670.64, any person who knowingly violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, cease and desist order, or requirement issued or adopted pursuant to this act is, upon conviction, guilty of a misdemeanor, punishable by a fine of not more than fifty thousand dollars ($50,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313 (A.B.3173), § 8, eff. Sept. 30, 1992.)

**§ 8670.66. Intentional or negligent acts; civil penalties**

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

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

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

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

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

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

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.67 for the same act or failure to act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 337 (A.B.1742), § 12.)

**§ 8670.67. Intentional or negligent acts; administrative civil penalties**

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

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

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

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

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

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

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.66 for the same act or failure to act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313 (A.B.3173), § 10, eff. Sept. 30, 1992; Stats.1995, c. 337 (A.B.1742), § 13.)

**§ 8670.67.5. Discharge of oil; civil liability**

(a) Any person who without regard to intent or negligence causes or permits oil to be discharged shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed ten dollars ($10) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the discharge of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in the amount of thirty dollars ($30) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(d) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.68. Complaint; service; hearings; appeal; interest, attorney's fees and costs**

(a) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the administrator a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the administrator. If no notice of defense is filed within 10 days after service of the complaint, the administrator shall issue an order setting liability in the amount proposed in the complaint unless the administrator and the party have entered into a settlement agreement, in which case the administrator shall issue an order setting liability in the amount specified in the settlement agreement. If the party has not filed a notice of defense or if the administrator and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of the orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with a court of appeal a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(e) Any order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing of the complaint as specified in subdivision (a). The prevailing party shall be entitled to reasonable attorney's fees and costs.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313 (A.B.3173), § 11, eff. Sept. 30, 1992.)

**§ 8670.68.1. Expiration of time for review; application for judgment**

After the time for review has expired for a violation under this chapter or Division 36 (commencing with Section 71200) of the Public Resources Code, the administrator may apply to the clerk of the appropriate court for a judgment to collect the administrative civil liability imposed in accordance with Section 8670.68. The application, which shall include a certified copy of the administrator's order setting liability, a hearing officer's decision if any, or a settlement agreement if any, shall constitute a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

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

(Added by Stats.2001, c. 748 (A.B.715), §§ 42.)

**§ 8670.68.4. Operator of small craft refueling dock; failure to register; penalty**

Any operator of a small craft refueling dock who fails to register in compliance with subdivision (c) of Section 8670.36.1 shall be subject to a civil penalty in the amount of one hundred dollars ($100). The administrator may levy the penalty administratively.

(Added by Stats.1992, c. 1313 (A.B.3173), § 9, eff. Sept. 30, 1992.)

**§ 8670.68.5. Payment to prosecuting agency or office**

Twenty-five percent of any penalty collected under this article shall be paid to the agency or office prosecuting the action.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.69. Private attorney general actions**

Actions on behalf of the state or any other public entity to enforce Section 8670.61.5 through injunctive relief, declaratory relief, and all costs of the action, may be brought by any person in the public interest if both of the following occur:

(a) The action is commenced more than 60 days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator.

(b) No action has been commenced against the violation, or if commenced, is not being diligently prosecuted by the Attorney General, or any district attorney, city attorney or other prosecutor.

(c) This section applies to any actions brought with respect to any violations which have occurred, continue to occur or threaten to occur.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.69.4. Unauthorized activities; cease and desist orders**

(a) When the administrator determines that any person has undertaken, or is threatening to undertake, any activity or procedure that (1) requires a permit, certificate, approval, or authorization under this chapter, without securing a permit, or (2) is inconsistent with any of the permits, certificates, rules, regulations, guidelines, or authorizations, previously issued or adopted by the administrator, or (3) threatens to cause or substantially increases the risk of unauthorized discharge of oil into the marine waters of the state, the administrator may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the administrator may be subject to such terms and conditions as the administrator may determine are necessary to ensure compliance with this division.

(c) Any cease and desist order issued by the administrator shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the administrator shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

(e) Any cease and desist order issued by the administrator shall be consistent with subdivision (a) of Section 8670.27.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313 (A.B.3173), § 12, eff. Sept. 30, 1992.)

**§ 8670.69.6. Review of order**

Within 30 days after service of a copy of a cease and desist order issued by the administrator under Section 8670.69.4, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of an order of the administrator in any judicial proceeding brought to enforce the order or for other civil remedies.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

## Article 10. Environmental Enhancement Fund

**§ 8670.70. Fund created; use of money in fund**

The Environmental Enhancement Fund is hereby created in the State Treasury. All penalties collected under Article 9 (commencing with Section 8670.57) shall be deposited into the Environmental

Enhancement Fund, except as specified in Section 8670.64. The money in the fund shall only be used for environmental enhancement projects. The moneys shall not be used for the cleanup of an oil spill or the restoration required after an oil spill. The money is available for appropriation by the Legislature to the administrator for the purposes stated in this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

**§ 8670.71. Projects funded; enhancement project requirements**

(a) The administrator shall fund only those projects approved by the Environmental Enhancement Committee.

(b) For the purposes of this article, an enhancement project is a project that acquires habitat for preservation, or improves habitat quality and ecosystem function above baseline conditions, and that meets all of the following requirements:

(1) Is located within or immediately adjacent to California marine waters, as defined in subdivision (i) of Section 8670.3.

(2) Has measurable outcomes within a predetermined timeframe.

(3) Is designed to acquire, restore, or improve habitat or restore ecosystem function, or both, to benefit fish and wildlife.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 38.)

**§ 8670.72. Environmental Enhancement Committee; members; solicitation, submittal, review, and selection criteria for enhancement projects**

(a) The Environmental Enhancement Committee is hereby created. The committee shall consist of the following members:

(1) The administrator.

(2) A public member, to be appointed by the administrator, who shall be an officer or elected leader of a statewide nonprofit organization whose primary purpose is the protection and/or enhancement of natural resources.

(3) The executive officer of the State Coastal Conservancy, or his or her designee.

(b) The Environmental Enhancement Committee shall establish a process for the solicitation, submittal, review, and selection of environmental enhancement projects. Selection criteria shall be developed to ensure that projects meet the intent of this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 39.)

**§ 8670.73. Environmental Enhancement Grant Program; selection process and criteria; use of grant funds; return of funds exceeding actual costs; disclosure of conflicts of interest; habitat acquisition**

(a) The Environmental Enhancement Grant Program is hereby established. Project proposals shall be solicited when adequate funds have accumulated in the Environmental Enhancement Fund to cover the cost of an appropriate project or projects.

(b) Grants shall be awarded to nonprofit organizations, cities, counties, cities and counties, districts, state agencies, and departments; and, to the extent permitted by federal law, to federal agencies on a competitive basis using the selection process established by the Environmental Enhancement Committee. The selection criteria will be enumerated in all requests for proposals distributed to potential applicants. The administrator may grant funds for those projects that are selected by the Environmental Enhancement Committee and that meet the requirements of this article. State departments and agencies

receiving grants under this section for environmental enhancement projects, shall, to the maximum extent feasible, utilize the services of the California Conservation Corps in accordance with Section 14315 of the Public Resources Code.

(c) Grant recipients shall use the grant award to fund only the project described in the recipient's application.

(d) Grant recipients shall not use the grant funds to shift money to or otherwise cover costs of an existing or proposed project or activity not included in the application.

(e) Any grant funds allocated to a project that exceed the actual cost of completing the project as outlined in the recipient's application shall be returned to the Environmental Enhancement Fund, and shall not be used by the grant recipient for any other purpose.

(f) If a member of the Environmental Enhancement Committee, or a member of his or her immediate family, is employed by a grant applicant, the employer of a grant applicant, or a consultant or independent contractor employed by the grant applicant, the committee member shall make that disclosure to the other members of the committee and shall not participate or make recommendations on the grant proposal of that applicant.

(g) For habitat acquisition, the Environmental Enhancement Committee shall be subject to the same provisions as prescribed in Section 31116 of the Public Resources Code.

(Added by Stats.2004, c. 796 (S.B.1742), § 39.5.)

## DIVISION 1.
## Chapter 6. Damages from Poaching and Illegal Sales

### § 500. Guidelines for ascertaining civil penalties; value; considerations; application to civil actions

(a) The commission shall, by regulation, adopt guidelines to assist the director and the department in ascertaining the amount of civil penalties to be imposed pursuant to Section 2582 or 2583. The guidelines may include monetary amounts or ranges of monetary amounts that the commission finds are adequate to deter illegal actions and partially compensate the people of California for losses to the fish and wildlife resources from illegal transactions described in Section 2582 or 2583 for profit or personal gain.

(b) If the violation involves birds, mammals, amphibians, reptiles, or fish with a value in the aggregate of less than four hundred dollars ($400) and involves only the transportation, taking, or receipt of fish or wildlife taken or possessed in violation of this code, the guidelines shall provide that the civil penalty shall not exceed the maximum criminal fine provided by law for the violation in this code or ten thousand dollars ($10,000), whichever is less. For purposes of this section, "value" means the retail market value if a market value exists, the potential monetary gain to the accused or, for commercial species, the established retail market value.

(c) The guidelines shall include consideration of the nature, circumstances, extent, and gravity of the prohibited acts committed, and the degree of culpability of the violator, including lesser penalties for acts which have little significant effect upon the resources and greater penalties for acts which may cause serious injury to the resources.

(d) Nothing in this chapter or in Chapter 6.5 (commencing with Section 2580) of Division 3 shall be used to establish a monetary value for fish or wildlife resources in connection with any development, project, or land or water use plan or activity as permitted by any federal, state, or local governmental activity. This chapter does not apply to any action brought to recover civil damages under Section 2014.

(Added by Stats.1988, c. 1059, § 3.)

## DIVISION 2.
## Chapter 1. Organization and General Functions
## Article 1. Generally

### § 711.7. Federal lands; filing fees

(a) The fish and wildlife resources are held in trust for the people of the state by and through the department.

(1) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal land and water adjacent to or affecting state trust resources, all persons engaging in projects or activities under federal license, contract, or permit, to the extent permitted by federal law, shall be governed by this article and shall pay project filing fees unless the payment of state filing and permit fees is explicitly preempted by the authority of the federal agency permitting the use or modification of state trust resources.

(2) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal lands and waters adjacent to or affecting state trust resources, all federal agencies acting in their proprietary capacity, to the extent permitted by federal law, shall be governed by this article and Sections 10005 and 21089 of the Public Resources Code, unless the payment of state filing and permit fees is explicitly preempted by the authority of a particular federal agency.

(b) If a court of competent jurisdiction finds that any provision of this section or the application thereof to any federal agency, person, or circumstances is held invalid, that invalidity shall

not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Added by Stats.1990, c. 1706 (A.B.3158), § 5.)

**Chapter 8. Conservation of Wildlife Resources**
**Article 2. Policy**

**§ 1802. Environmental protection act project activities; review and comment upon documents and impacts**

The department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The department, as trustee for fish and wildlife resources, shall consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in the California Environmental Protection Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(Added by Stats.1990, c. 1706 (A.B.3158), § 10.)

**DIVISION 3.**
**Chapter 1. Taking and Possessing in General**

**§ 2014. Civil damages for unlawful or negligent taking or destruction of fish and game; exceptions; deposit of damages and penalties**

(a) It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibian. The state may recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile, or amphibian protected by the laws of this state.

(b) The measure of damages is the amount which will compensate for all the detriment proximately caused by the destruction of the birds, mammals, fish, reptiles, or amphibia.

(c) An action to recover damages under this section shall be brought in the name of the people of the state, in a court of competent jurisdiction in the county in which the cause of action arose. The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code.

(d) This section does not apply to persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops as provided by law.

(e) No damages may be recovered against a local agency pursuant to this section if civil penalties are assessed against the local agency for the same detriment pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(f) Any recovery or settlement of money damages, including, but not limited to, civil penalties, arising out of any civil action filed and maintained by the Attorney General in the enforcement of this section shall be deposited by the department in the subaccounts of the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund as specified in Section 13011.

(g) For purposes of this section, "local agency" includes any city, county, city and county, district, public authority, or other political subdivision.

(Added by Stats.1957, c. 456, p. 1342, § 2014. Amended by Stats.1972, c. 974, p. 1767, § 10; Stats.1977, c. 767, p. 2392, § 1; Stats.1986, c. 977, § 1; Stats.1995, c. 720 (A.B.902), § 1.)

## Chapter 6.5. Control of Illegally Taken Fish and Wildlife

**§ 2583. Civil penalty; guidelines**

(a) Except as provided in subdivision (b), any person who violates this code or any regulation adopted to carry out this code, and, with the exercise of due care, should have known that the birds, mammals, amphibians, reptiles, or fish, or the endangered or threatened species, or the fully protected birds, mammals, or fish were taken, possessed, transported, imported, received, purchased, acquired, or sold in violation of, or in a manner unlawful under, this code, may be assessed a civil penalty. The civil penalty imposed under this chapter by the department shall not be more than ten thousand dollars ($10,000) for each bird, mammal, amphibian, reptile, or fish, or for each endangered or threatened species, or each fully protected bird, mammal, or fish unlawfully taken, possessed, transported, imported, received, purchased, acquired, or sold. This civil penalty may be in addition to any other penalty, civil or criminal, provided in this code or otherwise by law.

(b) No civil penalties shall be imposed under this chapter until the guidelines for the imposition of the penalties are adopted by the commission pursuant to Section 500.

(Added by Stats.1988, c. 1059, § 4.)

**§ 2584. Civil or criminal remedy; consultation with district attorney; concurrence of Attorney General; referee or hearing board; investigation and complaint; service; order; hearing; determination; civil penalty; settlement agreement; reasons for action; petition for writ of mandate for review; public records**

(a) Upon an actionable violation, the department shall consult, as to the appropriate civil or criminal remedy, with the district attorney in the jurisdiction where the violation was alleged to have occurred. Before proceeding with a civil action, the department shall seek the concurrence of the Attorney General.

(b) The director shall appoint a qualified referee or hearing board, composed of one or any combination of the following persons:

(1) A qualified hearing officer, as defined in subdivision (a) of Section 2580.

(2) A retired judge of the Superior Court who is knowledgeable in fish and wildlife law.

(3) A qualified neutral referee, appointed upon petition to the Superior Court in which the violation was alleged to have occurred.

(c) The director, after investigation of the facts and circumstances, may issue a complaint to any person on whom a civil penalty may be imposed pursuant to Section 2582 or 2583. The complaint shall allege the acts or failures to act that constitute a basis for a civil penalty and the amount of the proposed civil penalty. The complaint shall be served by personal service or certified mail and shall inform the person so served that a hearing shall be conducted within 60 days after the person has been served, unless the person waives the right to a hearing. If the person waives the right to a hearing, the department shall issue an order setting liability in the amount proposed in the complaint. If the person has waived the right to a hearing or if the department and the person have entered into a settlement agreement, the order shall be final.

(d) Any hearing required under this section shall be conducted by a referee or hearing board according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise provided in this section. In making a determination, the hearing officer may consider the records of the department in the matter, the complaint, and any new facts brought to his or

her attention by that person. The hearing officer shall be the sole trier of fact as to the existence of a basis for liability under Section 2582 or 2583. The hearing officer shall make the determination of the facts of the case and shall prepare and submit the proposed decision, including recommended penalty assessment, to the director for his or her review and assistance in the penalty assessment process.

(e) The director may assess the civil penalty, and may reduce the amount, or not impose any assessment, of civil penalties based upon the nature, circumstances, extent, and gravity of the prohibited acts alleged, and the degree of culpability of the violator; or the director may enter into a settlement agreement with the person in the best interests of the state or confirm the amount of civil penalties contained in the complaint. If the director reduces the amount of the civil penalty, does not impose the civil penalty, or enters into a settlement agreement, the director shall seek the recommendation of the hearing officer and enter into the records of the case the reasons for that action, including the hearing officer's recommendation. The decision of the director assessing the civil penalty is final. The proposed decision is a public record and shall be served upon the person. The director may approve the proposed decision in its entirety, or the director may reduce the proposed penalty and adopt the balance of the proposed decision.

(f) Upon the final assessment of the civil penalty, the department shall issue an order setting the amount of the civil penalty to be imposed. An order setting civil liability under this section becomes effective and final upon the issuance thereof, and payment shall be made within 30 days of issuance. Copies of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared before the director and requested a copy. Copies of the order shall be provided to any person within 10 days of receipt of a written request from that person.

(g) Within 30 days after service of a copy of an order setting the amount of the civil penalty, any person so served may file with the superior court a petition for a writ of mandate for review of the order. In all proceedings pursuant to this subdivision, the court shall exercise its independent judgment on the evidence in the whole record. The filing of a petition for a writ of mandate shall not stay any other civil or criminal action.

(h) The records of the case, after all appeals are final, are public records, as defined in subdivision (d) of Section 6252 of the Government Code.

(Added by Stats.1988, c. 1059, § 4.)

## DIVISION 6.
## Chapter 2. Pollution
## Article 1. General

### § 5650. Water pollution; prohibition; affirmative defense

(a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(1) Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.

(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.

(3) Any sawdust, shavings, slabs, or edgings.

(4) Any factory refuse, lime, or slag.

(5) Any cocculus indicus.

(6) Any substance or material deleterious to fish, plant life, mammals, or bird life.

(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to, and in compliance with, the terms and conditions of a waste discharge requirement pursuant to Section 13263 of the Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code issued by the State Water Resources Control Board or a regional water

quality control board after a public hearing, or that is expressly authorized pursuant to, and in compliance with, the terms and conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification pursuant to Section 13160 of the Water Code. This section does not confer additional authority on the State Water Resources Control Board, a regional water quality control board, or any other entity.

(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:

(1) The defendant complied with all applicable state and federal laws and regulations requiring that the discharge or release be reported to a government agency.

(2) The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state.

(3) The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.

(d) The affirmative defense in subdivision (c) does not apply and may not be raised in an action for civil penalties or injunctive relief pursuant to Section 5650.1.

(e) The affirmative defense in subdivision (c) does not apply and may not be raised by any defendant who has on two prior occasions in the preceding five years, in any combination within the same county in which the case is prosecuted, either pleaded nolo contendere, been convicted of a violation of this section, or suffered a judgment for a violation of this section or Section 5650.1. This subdivision shall apply only to cases filed on or after January 1, 1997.

(f) The affirmative defense in subdivision (c) does not apply and may not be raised by the defendant in any case in which a district attorney, city attorney, or Attorney General alleges, and the court finds, that the defendant acted willfully.

(Amended by Stats.1996, c. 1122 (S.B.649), § 1; Stats.1997, c. 766 (A.B.11), § 1, eff. Oct. 8, 1997; Stats.2006, c. 296 (A.B.2485), § 3; Stats.2007, c. 130 (A.B.299), § 96.)

**§ 5650.1. Violation of § 5650; civil penalty; enforcement**

(a) Every person who violates Section 5650 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(e) In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

(f) After the party seeking the injunction has met its burden of proof, the court shall determine whether to issue a temporary restraining order, preliminary injunction, or permanent

injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. The court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, the quantity and characteristics of the substance or material involved, the extent of environmental harm caused by the violation, measures taken by the defendant to remedy the violation, the relative likelihood that the material or substance involved may pass into waters of the state, and the harm likely to be caused to the defendant.

(g) The court, to the maximum extent possible, shall tailor any temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow the defendant to continue business operations in a lawful manner.

(h) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

(Added by Stats.1991, c. 844 (A.B.1386), § 2. Amended by Stats.1996, c. 1122 (S.B.649), § 2)

**§ 5651. Correction of chronic water pollution**

Whenever it is determined by the department that a continuing and chronic condition of pollution exists, the department shall report that condition to the appropriate regional water quality control board, and shall cooperate with the board in obtaining correction or abatement in accordance with any laws administered by the board for the control of practices for sewage and industrial waste disposal.

(Added by Stats.1957, c. 456, p. 1394, § 5651. Amended Stats.1985, c. 1429, § 1, eff. Oct. 1, 1985.)

**§ 5652. Disposal of cans, bottles, garbage, motor vehicles and parts, viscera or carcass of dead mammal or bird**

a) It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.

b) The abandonment of any motor vehicle in any manner that violates this section shall constitute a rebuttable presumption affecting the burden of producing evidence that the last registered owner of record, not having complied with Section 5900 of the Vehicle Code, is responsible for that abandonment and is thereby liable for the cost of removal and disposition of the vehicle. This section prohibits the placement of a vehicle body on privately owned property along a streambank by the property owner or tenant for the purpose of preventing erosion of the streambank.

c) This section does not apply to a refuse disposal site that is authorized by the appropriate local agency having jurisdiction or to the depositing of those materials in a container from which the materials are routinely removed to a legal point of disposal.

d) This section shall be enforced by all law enforcement officers of this state.

(Added by Stats.1961, c. 1061, p. 2749, § 1. Amended by Stats.1967, c. 558, p. 1907, § 1; Stats.1970, c. 665, p. 1293, § 1; Stats.1972, c. 403, p. 724, § 1; Stats.1997, c. 693 (S.B.614), § 1, eff. Oct. 6, 1997; Stats.2007, c. 285 (A.B.1279), § 107.)

**§ 5655. Petroleum or petroleum products discharge; clean up or abatement order; endangerment requirement**

(a) In addition to the responsibilities imposed pursuant to Section 5651, the department may 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, 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.

(b) No order shall be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production that is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) For purposes of this section, "petroleum product" means oil in any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide that has been applied for agricultural, commercial, or industrial purposes or has been applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, that has not been discharged accidentally or for purposes of disposal, and whose application was in compliance with all applicable state and federal laws and regulations.

(Added by Stats.1970, c. 1224, p. 2143, § 1. Amended by Stats.1985, c. 864, § 1; Stats.1985, c. 1429, § 2, eff. Oct. 1, 1985; Stats.1985, c. 1429, § 3, eff. Oct. 1, 1985, operative Jan. 1, 1985; Stats.1989, c. 1084, § 1; Stats.1995, c. 720 (A.B.902), § 2; Stats.1996, c. 1023 (S.B.1497), § 49, eff. Sept. 29, 1996.)

**§ 5656. Recovery or settlement of money damages; disposition**

Any recovery or settlement of money damages, including, but not limited to, civil penalties arising out of any civil action filed and maintained by the Attorney General in the enforcement of this article shall be deposited in the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund.

(Added by Stats.1986, c. 977, § 2. Amended by Stats.1995, c. 720 (A.B.902), § 3.)

## Chapter 5. Fish Planting and Propagation
## Article 3. Aquatic Nuisance Species Prevention and Control Act

**§ 6430. Findings and declarations of legislature**

***Repealed by Stats.2003, c. 610 (A.B.1770), § 9.***

**Prior to Repeal:** (Added by Stats.1992, c. 840 (A.B.3207), § 1. Amended by Stats.2001, c. 753 (A.B.1673), § 6.)

**§ 6431. Aquatic nuisance species defined**

***Repealed by Stats.2003, c. 610 (A.B.1770), § 9.***

**Prior to Repeal:** (Added by Stats.1992, c. 840 (A.B.3207), §1.)

**§ 6432. Ballast Water Management Program; implementation**

***Repealed by Stats.2003, c. 610 (A.B.1770), § 9.***

**Prior to Repeal:** (Added by Stats.1992, c. 840 (A.B.3207), § 1. Amended by Stats.2000, c. 388 (A.B.2941), § 2.1.)

**§ 6433. Duration of article**

***Repealed by Stats.2003, c. 610 (A.B.1770), § 9.***

**Prior to Repeal:** (Formerly § 6439, added by Stats.1992, c. 840 (A.B.3207), § 1. Amended by Stats.1997, c. 490 (S.B.1003), § 3; Stats.1999, c. 185 (S.B.394), § 1. Renumbered § 6433 and amended by Stats.2000, c. 388 (A.B.2941), § 2.8.)

**Chapter 9. Interagency Aquatic Invasive Species Council**

**§ 6951. Legislative findings and declarations**

***Repealed by Stats.2005, c. 77 (S.B.64), § 10.***

**Prior to Repeal:** (Formerly § 6430, added by Stats.1992, c. 840 (A.B.3207), § 1, amended by Stats.2001, c. 753 (A.B.1673), § 6. Renumbered and added by Stats 2003, c. 610 (A.B.1770), §11)

**§ 6957. Ballast Water Management Program; implementation**

***Repealed by Stats.2005, c. 77 (S.B.64), § 10.***

**Prior to Repeal:** (Formerly § 6432, added by Stats.1992, c. 840 (A.B.3207), § 1, amended by Stats.2000, c. 388 (A.B.2941), § 2.1. Renumbered and added by Stats 2003, c. 610 (A.B.1770), §12.)

**DIVISION 9.**

**Chapter 1. General Provisions**

**§ 12002. Penalty for misdemeanor**

(a) Unless otherwise provided, the punishment for a violation of this code that is a misdemeanor is a fine of not more than one thousand dollars ($1,000), imprisonment in the county jail for not more than six months, or <u>by</u> both <u>that</u> fine and imprisonment.

(b) The punishment for a violation of any of the following provisions is a fine of not more than two thousand dollars ($2,000), imprisonment in the county jail for not more than one year, or both the fine and imprisonment:

(1) Section 1059.

(2) Subdivision (d) of Section 4004.

(3) Section 4600.

(4) Paragraph (1) or (2) of subdivision (a) of Section 5650.

(5) A first violation of Section 8670.

(6) Section 10500.

* * *

<u>(7)</u> Unless a greater punishment is otherwise provided, a violation subject to subdivision (a) of Section 12003.1.

(c) Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars ($5,000), imprisonment in the county jail for not more than six months, or by both that fine and * * * imprisonment.

(d)(1) A license * * *, tag, stamp, reservation, permit, or other entitlement or privilege issued pursuant to this code to a defendant who fails to appear at a court hearing for a violation of this code, or who fails to pay a fine imposed pursuant to this code, shall be immediately suspended or revoked. The license * * *, tag, stamp, reservation, permit, or other entitlement or privilege shall not be reinstated or renewed, and no other license * * *, tag, stamp, reservation, permit, or other entitlement or privilege shall be issued to that person pursuant to this code, until the court proceeding is completed or the fine is paid.

(2) This subdivision does not apply to any violation of Section 1052, 1059, 1170, * * * 5650, 5653.9, 6454, 6650, or 6653.5.

(Added by Stats.1974, c. 770, p. 1691, § 2. Amended by Stats.1978, c. 1153, p. 3540, § 8; Stats.1979, c. 877, p. 3060, § 5, eff. Sept. 22, 1979; Stats.1982, c. 1486, § 24; Stats.1982, c. 1534, § 6; Stats.1983, c. 1092, § 102, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1983, c. 703, § 3, eff. Sept. 11, 1983; Stats.1984, c. 216, § 2; Stats.1984, c. 1215, § 2; Stats.1997, c. 771 (A.B.739), § 2; Stats.2000, c. 374 (A.B.1178), § 1; Stats.2007, c. 285 (A.B.1729), § 134.)

**§ 12011. Violations of § 5650; additional fines; discharges in compliance with federal, state or regional permits**

(a) In addition to the penalty provided in paragraph (4) of subdivision (b) of Section 12002, any person convicted of a violation of subdivision (a) of Section 5650 is subject to an additional fine of all of the following:

(1) Not more than ten dollars ($10) for each gallon or pound of material discharged. The amount of the fine shall be reduced for every gallon or pound of the illegally discharged material that is recovered and properly disposed of by the responsible party.

(2) An amount equal to the reasonable costs incurred by the state or local agency for cleanup and abatement and to fully mitigate all actual damages to fish, plant, bird, or animal life and habitat.

(3) Where the state or local agency is required to undertake cleanup or remedial action because the responsible person refuses or is unable to fully clean up the discharge, an amount equal to the reasonable costs incurred by the state or local agency, in addition to the amount of funds, if any, expended by the responsible person, in cleaning up the illegally discharged material or abating its effects, or both cleaning up and abating those effects.

(b) Notwithstanding the jurisdiction of the department over illegal discharges and pollution as provided in Section 5650, the fines specified in this section do not apply to discharges in compliance with a national pollution discharge elimination system permit or a state or regional board waste discharge permit.

(Added by Stats.1991, c. 1193 (S.B.1081), § 1. Amended by Stats.2004, c. 183 (A.B.3081), § 116.)

**§ 12015. Removal of substances polluting waters**

(a) It is the intent of the Legislature that expeditious cleanup is the primary interest of the people of the State of California in order to protect the people and the environment of the state.

(b) In addition to any other penalty, anyone responsible for polluting, contaminating, or obstructing waters of this state, or depositing or discharging materials threatening to pollute, contaminate, or obstruct waters of this state, to the detriment of fish, plant, bird, or animal life in those waters, shall be required to remove any substance placed in the waters, or to remove any material threatening to pollute, contaminate, or obstruct waters of this state, which can be removed, that caused the prohibited condition, or to pay the costs of the removal by the department.

(c) Prior to taking any action committing the use of state funds pursuant to this section or Section 5655, the department shall first make a reasonable effort to have the person responsible, when that person is known and readily available, remove, or agree to pay for the removal of, the substance causing the prohibited condition, if the responsible person acts expeditiously and does not cause the prohibited condition to be prolonged to the detriment of fish, plant, animal, or bird life in the affected waters. When the responsible party is unknown or is not providing adequate and timely cleanup, the emergency reserve account of the Toxic Substances Control Account in the General Fund shall be used to provide funding for the cleanup pursuant to Section 25354 of the Health and Safety Code. When those or other funds are not available, moneys in the Fish and Wildlife Pollution Account shall be available, in accordance with subdivision (b) of Section 12017, for funding the cleanup expenses.

(Added by Stats.1957, c. 2039, p. 3609, § 4. Amended by Stats.1985, c. 864, §2; Stats.1995, c. 720 (A.B.902), § 4; Stats.2006, c. 77 (A.B.1803), § 3, eff. July 18, 2006.)

**§ 12016. Deleterious substances discharged or deposited in waters; civil liability**

(a) In addition to any other provision of law, any person who discharges or deposits any substance or material deleterious to fish, plant, bird, or animal life or their habitat into, or which threatens to enter, the waters of this state is liable civilly to the department for all actual damages to fish, plant, bird, or animal life or their habitat and, in addition, for the reasonable costs incurred in cleaning up the deleterious substance or material or abating its effects, or both.

(b) For the purposes of this section, "deleterious substance or material" does not include substances or materials otherwise expressly permitted or authorized to be deposited or discharged into waters of the state by law.

(Added by Stats.1985, c. 864, § 3.)

**§ 12017. Recoveries or settlements; deposit into Fish and Wildlife Account; approved expenditures**

(a) Notwithstanding Section 13001, any recovery or settlement of money received pursuant to the following sections shall be deposited in the Fish and Wildlife Pollution Account:

(1) Section 2014.

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

(3) Section 12015 or 12016.

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

(5) Section 13442 of the Water Code.

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

(b) Moneys in the account are continuously appropriated to the department, except as provided in Section 13230.

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

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

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

(3) Resource injury determination.

(4) Resource damage assessment.

(5) Economic valuation of resources.

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

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

(e) Funds in the account may be expended for cleanup and abatement if a reasonable effort has been made to have the responsible party pay cleanup and abatement costs and funds are not available for disbursement from the emergency reserve account of the * * * Toxic Substances Control Account in the General Fund pursuant to Section * * * 25354 of the Health and Safety Code.

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

(Added by Stats.1985, c. 864, § 4. Amended by Stats.1986, c. 977, § 3; Stats.1989, c. 1084, § 2; Stats.1995, c. 720 (A.B.902), § 5; Stats.2007, c. 373 (A.B.1220), § 1.)

## DIVISION 10.
## Chapter 1. State

### § 13010. Fish and Wildlife Pollution Accounts; subaccounts

There is a Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund. The Fish and Wildlife Pollution Account is the successor to the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund which is hereby abolished. All references in any law to the Fish and Wildlife Pollution Cleanup and Abatement Account shall be deemed to refer to the Fish and Wildlife Pollution Account. All money in the Fish and Wildlife Pollution Cleanup and Abatement Account on January 1, 1996, shall be transferred to the Fish and Wildlife Pollution Account. The following subaccounts are created within the Fish and Wildlife Pollution Account:

(a) The Oil Pollution Administration Subaccount.
(b) The Oil Pollution Response and Restoration Subaccount.
(c) The Hazardous Materials Administration Subaccount.
(d) The Hazardous Materials Response and Restoration Subaccount.

(Added by Stats.1995, c. 720 (A.B.902), § 7.)

### § 13011. Subaccount deposits; recovery or settlement monies

The state portion of any recovery or settlement of money damages received pursuant to any citation or charges brought under the following sections by the people by or through any state or local public entity shall be deposited in the following subaccounts:

(a) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either civil or criminal action or administrative civil liability for violations of the oil and petroleum product control and discharge provisions of this code, including, but not limited to, Sections 2014, 12011, and 12016, Chapter 6.5 (commencing with Section 2580) of Division 3, and Chapter 2 (commencing with Section 5600) of Part 1 of Division 6 shall be deposited in the Oil Pollution Administration Subaccount or the Oil Pollution Response and Restoration Subaccount as determined by administrative or judicial settlement, or as provided by law.

(b) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either criminal or administrative civil liability for violations of hazardous materials and other pollution laws including, but not limited to, Sections 2014 and 12016, and Chapter 6.5 (commencing with Section 2580) of Division 3 and Part 1 (commencing with Section 5500) of Division 6 shall be deposited in the Hazardous Materials Administration Subaccount or the Hazardous Materials Response and Restoration Subaccount as determined by administrative or judicial settlement or as provided by law.

(Added by Stats.1995, c. 720 (A.B.902), § 8.)

**§ 13012. Subaccounts; maximum amounts; excess funds**

Funds on deposit in the subaccounts shall not exceed the amounts prescribed below, adjusted in accordance with Section 2212 of the Revenue and Taxation Code to equal 1995 dollars:

(a) The Oil Pollution Administration Subaccount shall not exceed five million dollars ($5,000,000).

(b) The Oil Pollution Response and Restoration Subaccount shall not exceed ten million dollars ($10,000,000).

(c) The Hazardous Materials Administration Subaccount shall not exceed five million dollars ($5,000,000).

(d) The Hazardous Material Response and Restoration Subaccount shall not exceed ten million dollars ($10,000,000).

All funds in the Fish and Wildlife Pollution Account in excess of the amounts listed above, on June 30 of each fiscal year, shall be used by the department in succeeding fiscal years for projects that preserve California plants, wildlife, and fisheries.

(Added by Stats.1995, c. 720 (A.B.902), § 9.)

**§ 13013. Appropriations; maximum amounts; prudent reserves; recovery of expenditures**

(a) Appropriations from either the Oil Pollution Administration Subaccount or the Hazardous Materials Administration Subaccount shall not exceed one third of the maximum fund level established under Section 13012 in order to maintain a prudent reserve for future appropriations.

(b) If the director <u>or</u> his or her * * * designee expends funds from the prudent reserve established pursuant to subdivision (a) for activities authorized under subdivision (b) of Section 13230, the director * * * <u>or the director's</u> designee shall ensure that there are adequate funds remaining in those subaccounts to carry out their purposes. Expenditures from the prudent reserve shall be repaid in part, or in full, from any funds received pursuant to Section 13011 until those reserves are fully reimbursed.

(c) The director <u>or</u> his or her * * * designee, shall recover from the spiller, responsible party, or, in the absence of those responsible parties, from a particular pollution abatement or remediation account, all expenditures paid from the accounts established pursuant to subdivisions (b) and (d) of Section 13230, and all costs incurred by the department arising from the administration and enforcement of applicable pollution laws. <u>The director or his or her designee may request, and a district attorney, city attorney, or other prosecuting agency, as part of a prosecution or negotiation, may allege a claim for, these costs and expenditures and shall deposit any recoveries into the fund from which they were expended.</u>

(d) The director <u>or</u> his or her * * * designee * * * shall ensure that there are adequate funds in the accounts and subaccounts specified in this section to carry out their purposes.

(Added by Stats.1995, c. 720 (A.B.902), § 10. Amended by Stats.2007, c. 373 (A.B.1220), § 2, eff. Oct. 10, 2007.)

**§ 13014. Fish and Game Mitigation and Protection Endowment Principal Account and Fish and Game Mitigation and Protection Expendable Funds Account**

(a) There are hereby established in the Special Deposit Fund, continued in existence by Section 16370 of the Government Code, both of the following accounts:

(1) The Fish and Game Mitigation and Protection Endowment Principal Account. The department shall deposit in this account the endowment funds received by the department pursuant to an agreement described in subdivision (b) and all interest generated thereon. The interest moneys shall be available to the department, upon appropriation by the Legislature, to fund long-term management, enhancement, monitoring, and enforcement activities on habitat lands in a manner consistent with the terms of the underlying agreement.

(2) The Fish and Game Mitigation and Protection Expendable Funds Account. The department shall deposit in this account moneys received pursuant to an agreement described in subdivision (b) that are not endowment funds and that are designated for expenditure for the purposes described in paragraph (2) of that subdivision. Notwithstanding Section 13340 of the Government Code, the moneys in the account established by this paragraph are hereby continuously appropriated to the department for expenditure without regard to fiscal year, for the purposes described in this section.

(b)(1) The department may deposit moneys into the accounts established pursuant to subdivision (a) that it receives pursuant to any of the following, if those moneys are received for the purposes described in paragraph (2):

(A) Agreements or permits pursuant to the Natural Communities Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(B) Conservation bank agreements.

(C) Habitat conservation implementation agreements.

(D) Incidental take permits.

(E) Legal or other written settlements.

(F) Mitigation agreements.

(G) Streambed or lakebed alteration agreements.

(H) Trust agreements.

(2) The department may deposit the moneys received pursuant to an agreement described in paragraph (1) in an account established by this section only if it receives those moneys for at least one of the following purposes:

(A) Mitigating the adverse biological impacts of a specific project, activity, spill, or release.

(B) Protecting, conserving, restoring, enhancing, managing, and maintaining fish, wildlife, native plants, or their habitats.

Added by Stats.2004, c. 427 (A.B.2517), § 1.

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# CIVIL CODE

## DIVISION 4.
## PART 1. Relief
## Title 2. Compensatory Relief
## Chapter 2. Measure of Damages
## Article 2. Damages for Wrongs

**§ 3333.5. Pipeline corporations; oil spills; liability; costs; attorneys' fees; clean-up responsibility; application of section; definitions**

(a) Each pipeline corporation that qualifies as a public utility within Section 216 of the Public Utilities Code that transports any crude oil or fraction thereof in a public utility oil pipeline system that meets the requirements of subdivision (h) shall be absolutely liable without regard to fault for any damages incurred by any injured party that arise out of, or are caused by, the discharge or leaking of crude oil or fraction thereof from the public utility pipeline.

(b) A pipeline corporation is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government caused solely by an act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, other than an earthquake, which damages could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages in the proportion caused by the negligence, intentional malfeasance, or criminal act of the landowner, or an agent, employee, or contractor of the landowner, upon whose property the pipeline system is located.

(3) Except as provided by paragraph (2), damages caused solely by the negligence or intentional malfeasance of the injured person.

(4) Except as provided by paragraph (2), damages caused solely by the criminal act of a third party other than the pipeline corporation or an agent or employee of the pipeline corporation.

(5) Natural seepage from sources other than the public utility oil pipeline.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) Damages for which a pipeline corporation is liable under this section are the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs.

(2) Injury to, or economic losses resulting from, destruction of or injury to real or personal property.

(3) Injury to, destruction of, or loss of, natural resources, including, but not limited to, the reasonable cost of rehabilitating wildlife, habitat, and other resources and the reasonable cost of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district.

(4) Loss of taxes, royalties, rents, use, or profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(5) Loss of use and enjoyment of natural resources and other public resources or facilities in any action brought by the state, county, city, or district.

(d) The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(e)(1) A pipeline corporation shall immediately clean up all crude oil, or any fraction thereof, that leaks or is discharged from a pipeline subject to this section. Additionally, the pipeline corporation shall abate immediately, or as soon as practical, the effects of the leak or discharge and take all other necessary remedial action.

(2) A pipeline corporation may recover the costs of the activities specified in this section for which it is not at fault by means of any otherwise available cause of action, including, but not limited to, indemnification or subrogation.

(f) This section shall not apply to claims, or causes of action, for damages for personal injury or wrongful death.

(g) This section shall not prohibit any party from bringing any action for damages under any other provision or principle of law, including but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party to the extent the same party is or has been awarded damages for the same injury under any other provision or principle of law.

(h) This section shall only apply to all of the following:

(1) The pipeline system proposed to be constructed by Pacific Pipeline System, Inc., identified in Public Utilities Commission Application No. 91-10-013, for which the maximum requirement of one hundred million dollars ($100,000,000) set forth in paragraph (1) of subdivision (j) shall apply.

(2) Any other public utility pipeline system for which construction is completed on or after January 1, 1996, other than a pipeline system the entire length of which is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, (Division 7.8 (commencing with Section 8750) of the Public Resources Code). If part, but not all, of a pipeline system is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, any evidence of financial responsibility that satisfies that act, and that meets the conditions of this section, shall be credited toward the requirements of this section.

(3) Any major relocation of three miles or greater of a portion of a pipeline system along substantially new alignments accomplished through the exercise of eminent domain. This section shall not apply to the portions of the pipeline not relocated.

(i) This section shall not apply to the following:

(1) A pipeline system in existence prior to January 1, 1996, that is converted to a public utility prior or subsequent to January 1, 1996.

(2) A public utility pipeline system not otherwise subject to this section, that is the object of repair, replacement or maintenance, unless that activity constitutes relocation as described in paragraph (3) of subdivision (h).

(j)(1) No pipeline system subject to this section shall be permitted to operate unless the State Fire Marshal certifies that the pipeline corporation demonstrates sufficient financial responsibility to respond to the liability imposed by this section. The minimum financial responsibility required by the State Fire Marshal shall be seven hundred fifty dollars ($750) times the maximum capacity of the pipeline in the number of barrels per day up to a maximum of one hundred million dollars ($100,000,000) per pipeline system, or a maximum of two hundred million dollars ($200,000,000) per multiple pipeline systems.

(2) For the purposes of this section, financial responsibility shall be demonstrated by evidence that is substantially equivalent to that required by regulations issued under Section 8670.37.54 of the Government Code, including insurance, surety bond, letter of credit, guaranty, qualification as a self-insurer, or combination thereof or any other evidence of financial responsibility. The State Fire Marshal shall require the documentation evidencing financial responsibility to be placed on file with that office, and shall administer the documentation in a manner substantially equivalent to that provided by regulations issued under Section 8670.37.54 of the Government Code. Financial responsibility shall be available for payment of claims for damages described in subdivision (c) of any party, including, but not limited to, the State of California, local governments, special districts, and private parties, that obtains a final judgment therefor against the pipeline corporation.

(k) The State Fire Marshal shall require evidence of financial responsibility to fund postclosure cleanup costs. The evidence of financial responsibility shall be 15 percent of the amount of financial responsibility required under subdivision (j) and shall be maintained by the pipeline corporation for four years from the date the pipeline is fully idled pursuant to a closure plan approved by the State Fire Marshal.

(l) "Fraction" of crude oil means a group of compounds collected by fractional distillation that condenses within the same temperature band, or a material that consists primarily of that group of compounds or of a mixture of those groups of compounds.

(m)(1) Notwithstanding Section 228 of the Public Utilities Code, for purposes of this section, "pipeline corporation" means every corporation or person directly operating, managing or owning any pipeline system that qualifies as a public utility within Section 216 of the Public Utilities Code and for compensation within this state.

(2) For purposes of this section, "owning" refers to the legal entity owning the pipeline system itself and does not include legal entities having an ownership interest, in whole or in part, in the entity owning the pipeline system or multiple pipeline systems.

(3) "Pipeline system" means a collective assemblage of intrastate line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery station, and fabricated assemblies constructed for the same purpose at substantially the same time that form a facility through which crude oil or a fraction thereof moves in transportation.

(Formerly § 3333.4, added by Stats.1995, c. 979, § 2. Renumbered § 3333.5 and amended by Stats.1998, c. 485 (A.B.2803), § 40.)

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## GENERAL PROVISIONS

**§ 21. Vessel**

"Vessel" includes ships of all kinds, steamboats, steamships, canal boats, barges, sailing vessels, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(Added by Stats.1937, c. 368, p. 793, § 21.)

## DIVISION 1.5
## Chapter 3. Offenses

**§ 132. Dumping ballast from vessel in harbor; misdemeanor**

Every person who, within the anchorage of any port, harbor, or cove of this State, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel all or any part of the ballast, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to navigation, is guilty of a misdemeanor.

(Added by Stats.1937, c. 368, p. 797, § 132.)

**§ 133. Discharging fuel oil from vessel in harbor; definitions**

Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, or as otherwise permitted by law, it is unlawful and constitutes a misdemeanor for any person to discharge, or suffer the discharge of oil by any methods, means, or manner, into or upon the navigable waters of the State from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil in excess of that necessary for its lubricating requirements, and such as may be required under the laws and prescribed rules and regulations of the United States and this State. As used in this section, the term "oil" means oil of any kind or in any form, including fuel oil, oil sludge, and oil refuse, and the term, "navigable waters of the State," means all portions of the sea within the territorial jurisdiction of the State, and all inland waters navigable in fact in which the tide ebbs and flows.

(Added by Stats.1937, c. 368, p. 797, § 133.)

**§ 135. Transfer of hazardous substances; overflow mechanism; misdemeanor**

(a) It is unlawful to cause or permit any petroleum, chemical, or other hazardous substance to be transferred between a vessel and a shore facility or another vessel by means of a pipeline or similar conduit unless the flow is continuously monitored by a properly installed, operated, and maintained mechanism that will warn of the imminent occurrence of an overflow of the substance being transferred so that the flow can be terminated in time to avert the overflow, and unless the vessel and the shore facility are each equipped with a properly installed, operated, and maintained mechanism that will warn whenever any person is no longer properly discharging his duties in connection with the transfer, is inattentive, or becomes disabled for any reason. Violation of this section is a misdemeanor. However, it shall be a defense to any prosecution for a violation of this section if the mechanism was properly installed and was at all times properly operated and maintained by the person responsible for the mechanism.

(b) A vessel subject to Part 35 of Title 46, or to Parts 155 and 156 of Title 33, of the Code of Federal Regulations, or a shore facility subject to Parts 154 and 156 of Title 33 of the Code of Federal Regulations, satisfies the requirements of subdivision (a) if such vessel or shore facility formulates and establishes methods or operating procedures which are designed to satisfy such requirements and which are in accordance with applicable provisions of the Code of Federal Regulations. However, such

methods and procedures shall require that the persons in charge of a transfer operation communicate with each other as frequently as is necessary to warn whenever any person is no longer properly discharging his duties in connection with the transfer, is inattentive, or becomes disabled for any reason.

(c) This section does not apply to any transfer of fuel to any self-propelled vessel of less than 65 feet in length at any facility equipped with dispensing nozzles of the automatic shut-off type that do not have catch-locks and meet all federal standards.

(d) This section does not apply to any on-shore receiving tankage if appropriate containment or diversionary structures, or both, or other equipment that is adequate to prevent the overflowed substance from reaching the waters of the state is provided.

(e) This section shall become operative with respect to a tank vessel that is subject to examination by the United States Coast Guard not later than the first occasion on or after January 1, 1980, that it is required to be drydocked or hauled out for such examination, as provided in Section 31.10-20 of Title 46 of the Code of Federal Regulations. This section shall become operative on July 1, 1980, with respect to any vessel that is not subject to any such examination; any tank barge, regardless of whether it is subject to such an examination; and any shore facility not made exempt by subdivision (d).

(f) As used in this section, "vessel" means every description of watercraft or other contrivance used, or capable of being used, as a means of transportation through or on water, including, but not limited to, a barge.

(g) As used in this section, "hazardous substance" means any such substance defined in paragraph (2) of subsection (b) of Section 1321 of Title 33 of the United States Code.

(Added by Stats.1978, c. 1352, p. 4497, § 1. Amended by Stats.1979, c. 197, p. 434, § 1, eff. July 2, 1979; Stats.1980, c. 62, p. 168. § 1, eff. April 18, 1980.)

## Chapter 4. Civil Offenses

### § 151. Oil deposits; civil penalty; damages

Except where permitted pursuant to the provisions of Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, any person that intentionally or negligently causes or permits any oil to be deposited in the water of this state, including but not limited to navigable waters, shall be liable civilly in an amount not exceeding six thousand dollars ($6,000) and, in addition, shall be liable to any governmental agency charged with the responsibility for cleaning up or abating any such oil for all actual damages, in addition to the reasonable costs actually incurred in abating or cleaning up the oil deposit in such waters. The amount of the civil penalty which is assessed pursuant to this section shall be based upon the amount of discharge and the likelihood of permanent injury and shall be recoverable in a civil action by, and paid to, such governmental agency. If more than one such agency has responsibility for the waters in question, the agency which conducts the cleaning or abating activities shall be the agency authorized to proceed under this section.

(Added by Stats.1968, c. 1259, p. 2378, § 1. Amended by Stats.1971, c. 438, p. 890, § 123.)

### § 153. Recovery or settlement of money damages; deposits in fish and wildlife pollution cleanup and abatement account

Any recovery or settlement of money damages, including, but not limited to, civil penalties, arising out of any civil action filed and maintained by the Attorney General in the enforcement of this chapter shall be deposited in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund established pursuant to Section 12017 of the Fish and Game Code.

(Added by Stats.1986, c. 977, § 4.)

## DIVISION 2.
## Chapter 3. Losses
## Article 2. Liability

### § 293. Absolute liability of vessels engaged in transporting, storing or transferring petroleum, fuel oil or hazardous substances; Miller Anti-Pollution Act of 1971

Where damage arises out of, or is caused directly and proximately by, the acts of an owner or operator, without the interposition of any external or independent agency which could not reasonably be foreseen, any owner or operator of any vessel engaged in the commercial transportation, storage in a vessel, or transfer of petroleum, fuel oil, or hazardous substances shall be absolutely liable without regard to fault for any property damage incurred by the state or by any county, city or district, or by any person, within the state, and for any damage or injury to the natural resources of the state, including, but not limited to, marine and wildlife resources, caused by the discharge or leakage of petroleum, fuel oil, or hazardous substances from such vessel into or upon the navigable waters of the state.

As used in this section, "owner or operator" means any person owning or operating, or chartering by demise, such vessel; "person" means an individual, firm, corporation, limited liability company, association, or partnership; and "navigable waters of the state" means all portions of the sea within the territorial jurisdiction of the state and all inland waters navigable in fact.

As used in this section, "hazardous substance" means any substance designated as such pursuant to paragraph (2) of subdivision (b) of Section 1321 of Title 33 of the United States Code.

This section shall be known and may be cited as the Miller Anti-Pollution Act of 1971.

(Added by Stats.1971, c. 1763, p. 3811, § 1. Amended by Stats.1980, c. 231, p. 474, § 1; Stats.1994, c. 1010 (S.B.2053), § 147.)

### § 294. Absolute liability for damages from discharge or leaking of natural gas, oil or drilling waste into or onto or by exploration in or upon marine waters; exceptions; parties; costs and attorney fees; definitions; joint and several liability; application of section

(a) Any person responsible for natural gas, oil, drilling waste, or exploration, as defined in paragraph (4) of subdivision (g), shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of natural gas, oil, or drilling waste into or onto marine waters, or by any exploration in or upon marine waters, from any of the following sources:

(1) Any offshore well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.

(2) Any offshore facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.

(3) Any vessel offshore in which natural gas, oil, or drilling waste is transported, processed, or stored.

(4) Any pipeline located offshore in which natural gas, oil, or drilling waste is transported.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages which arise out of, or are caused by, a discharge which is authorized by a state or federal permit.

(c) Upon motion and sufficient showing by a person deemed to be responsible under this section, the court shall join to the action any other person who may be responsible under this section.

(d) In determining whether a party is a responsible person under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(e) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(f) This section does not prohibit any person from bringing an action for damages caused by natural gas, oil, or drilling waste, or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(g) As used in this section, the following definitions apply:

(1) "Damages" are damages for any of the following:

(A) Injury or harm to real or personal property.

(B) Business loss, including loss of income.

(C) Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste.

(D) Cost of wildlife rehabilitation.

(E) When the injured party is the state, or a city, county, or district, in addition to any injury described in subparagraphs (A) to (D), inclusive, damages include all of the following:

(i) Injury to natural resources or wildlife, and loss of use and enjoyment of public beaches and other public resources or facilities, within the jurisdiction of the state, city, county, or district.

(ii) Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste.

(iii) Loss of taxes.

(iv) Costs to assess damages to natural resources, wildlife, or habitat.

(2) "Injured party" means any person who suffers damages from natural gas, oil, or drilling waste, which is discharged or leaks into marine waters, or from offshore exploration. The state, or a city, county, or district, may be an injured party.

(3) "Natural gas" includes natural gas, liquified natural gas, and natural gas byproducts. "Natural gas" does not include natural gas carried in a vessel for use as fuel in that vessel.

(4) "Exploration" means boring and soil sampling.

(5) "Oil" and "drilling wastes" include, but are not limited to, petroleum, refined or processed petroleum, petroleum byproducts, oil sludge, oil refuse, oil mixed with wastes, and chemicals or other materials used in the exploration, recovery, or processing of oil. "Oil" does not include oil carried in a vessel for use as fuel in that vessel.

(6) "Person" means an individual, proprietorship, firm, partnership, joint venture, corporation, limited liability company, or other business entity, or an association or other organization.

(7) "Responsible person" means any of the following:

(A) The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this section.

(B) The owner, operator, or lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this section. "Responsible party" does not include the United States, the state, or any public agency.

(h) Liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(i) Section 3291 of the Civil Code applies to actions brought under this section.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or theory of law.

(Added by Stats.1986, c. 1498, § 2. Amended by Stats.1987, c. 56, § 99; Stats.1994, c. 1010 (S.B.2053), § 148.)

## DIVISION 3.
## Chapter 1. Vessels Generally
## Article 4. Vessel Traffic Service

### § 445. Operation by Marine Exchange of Los Angeles-Long Beach Harbor, Inc. in VTS area

(a) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., hereafter referred to as the marine exchange, a corporation organized under the Non- Profit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code, may operate a vessel traffic service, in cooperation with, and subject to the supervision of, the United States Coast Guard, for the waters of San Pedro Bay, San Pedro Channel, and Santa Monica Bay, within a radius of 25 nautical miles of the Point Fermin Light. These waters shall be known in this article as the "VTS area."

(b) This article applies only to the VTS area.

(Added by Stats.1991, c. 969 (A.B.134), § 2. Amended by Stats.1996, c. 362 (A.B.748), § 4.)

### § 445.5. Covered vessel

"Covered vessel," as used in this article, means any of the following:

(a) Every power-driven vessel of 40 meters (approximately 131 feet) or more in length, while navigating.

(b) Every towing vessel of 8 meters (approximately 26 feet) or more in length, while navigating. “Towing vessel,” as used in this article, means any commercial vessel engaged in towing another vessel astern or alongside or by pushing it ahead.

(c) Every vessel issued a certificate to carry 50 or more passengers for hire, when engaged in trade.

(Added by Stats.1996, c. 362 (A.B.748), § 6).

### § 446. Report by each covered vessel to marine exchange

Prior to entering the VTS area, every covered vessel shall report to the marine exchange the vessel's name, call sign, location, course, speed, destination, estimated time of arrival, and any impairment to the operation or navigation of the vessel, and, while transiting the VTS area, every covered vessel shall comply with the requirements of Section 447.5.

(Added by Stats.1991, c. 969 (A.B.134), § 2. Amended by Stats.1996, c. 362 (A.B.748), § 7.)

**§ 446.5. Fees**

The Ports of Los Angeles and Long Beach may impose fees upon all covered vessels within the VTS area to pay the cost of operating the vessel traffic service.

(Added by Stats.1991, c. 969 (A.B.134), § 2.)

**§ 447. Compliance with communications requirements**

The following vessels, while transiting the VTS area, shall comply with the requirements of Section 447.5:

(a) Every power-driven vessel of 20 meters or more in length.

(b) Every vessel of 100 gross tons or more carrying one or more passengers for hire.

(c) Every dredge and floating plant.

(Added by Stats.1996, c. 362 (A.B.748), § 9.)

**§ 447.5. Transiting the VTS; continuous communication**

While transiting the VTS area, every vessel described in Sections 445.5 and 447 shall do all of the following:

(a) Maintain continuous radio monitoring or communication with the marine exchange on the radio channel dedicated to the vessel traffic service.

(b) Respond promptly when hailed by the marine exchange.

(c) Communicate with the marine exchange in the English language.

(d) Comply with all VTS measures established by the marine exchange that do not conflict with federal and state statutes or regulations or the Los Angeles and Long Beach Harbor Safety Plan prepared pursuant to Section 8670.23.1 of the Government Code.

(Added by Stats.1996, c. 362 (A.B.748), § 10.)

**§ 448. Advisory nature of vessel traffic service; responsibilities of others**

The vessel traffic service shall be advisory in nature. Nothing in this article relieves, or is intended to relieve, any vessel, its owners, agents, charterers, operators, or other responsible or designated parties of command of the vessel or of any responsibilities they would otherwise have respecting the navigation and operation of any vessel. Each vessel within the VTS area shall be responsible for its safe navigation in accordance with the International Regulations for Preventing Collisions at Sea (1972) and any other international and local rules and regulations.

(Formerly § 447, added by Stats.1991, c. 969 (A.B.134), § 2. Renumbered § 448 and amended by Stats.1996, c. 362 (A.B.748), § 8.)

**§ 448.5. Marine exchange as agent of each vessel; extent of liability**

(a) It shall be understood and agreed, and shall be the essence of the marine exchange's operation of the vessel traffic service, that the marine exchange act as agent of each vessel subject to the requirements of this article within the VTS area in providing vessel traffic information and performing all other acts incidental to operation of the vessel traffic service.

(b) No vessel subject to the requirements of this article shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by the vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from negligent acts or omissions, of the marine exchange or any officer,

director, employee, or representative of the marine exchange.

(c) Each vessel subject to the requirements of this article shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or an officer, director, employee, or representative of the marine exchange.

(d) Nothing in subdivisions (b) and (c) shall affect liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or an officer, director, employee, or representative of the marine exchange in the operation of the vessel traffic service.

(Formerly § 448, added by Stats.1991, c. 969 (A.B.134), § 2. Renumbered § 448.5 and amended by Stats.1996, c. 362 (A.B.748), § 11.)

**§ 449. Application of limitation of liability for non-profit corporations and Lempert-Keene-Seastrand Oil Spill Prevention and Response Act**

(a) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(b) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the meaning of "responsible party" as defined in subdivision (q) of Section 8670.3 of the Government Code and subdivision (p) of Section 8750 of the Public Resources Code for the purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Article 3.5 (commencing with Section 8574.1) of Chapter 7 and Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code and Division 7.8 (commencing with Section 8750) of the Public Resources Code).

(Added by Stats.1991, c. 969 (A.B.134), § 2. Amended by Stats.1996, c. 362 (A.B.748), § 12.)

**§ 449.3. Cooperation with administrator for oil spill response in development and implementation of vessel traffic service system; revocation of authorization to operate**

The marine exchange shall cooperate fully with the administrator appointed pursuant to Section 8670.4 of the Government Code in the development and implementation of the vessel traffic service system required by Section 8670.21 of the Government Code. Upon certification by the administrator that, pursuant to Section 8670.21, the Coast Guard has commenced operation of a fully federally funded vessel traffic service system for the Los Angeles/Long Beach harbor, the authorization contained in Section 445 for the marine exchange to operate a vessel traffic service is revoked.

(Added by Stats.1991, c. 969 (A.B.134), § 2. Amended by Stats.2004, c. 796 (S.B.1742), § 40.)

**§ 449.5. Description of vessel traffic service; submission to administrator; determination after public hearing of consistency with harbor safety plan and statewide standards; order of modification; failure to comply; penalties; establishment of service after revocation of authorization**

(a) Upon request by the administrator, the marine exchange shall submit a complete description and operational status report of the vessel traffic service. After a public hearing, the administrator shall, in accordance with paragraph (8) of subdivision (f) of Section 8670.21 of the Government Code, determine whether the elements and operation of the vessel traffic service are consistent with the harbor safety plan for the Los Angeles and Long Beach harbors developed pursuant to Section 8670.23.1 of the Government Code and the standards of a statewide vessel traffic service plan or system developed pursuant to Section 8670.21 of the Government Code.

(b) If, pursuant to subdivision (a), the administrator determines that the vessel traffic service is inconsistent with the harbor safety plan for the Los Angeles and Long Beach harbors developed pursuant to Section 8670.23.1 of the Government Code and the standards of a statewide vessel traffic service plan or vessel traffic monitoring and communications system developed pursuant to Section 8670.21 of the Government Code, the administrator shall issue an order to the marine exchange which specifies modifications to the vessel traffic service to eliminate the inconsistencies.

(c) If the marine exchange has not complied with an order within six months of issuance, then the administrator, after a public hearing, may take any or all of the following actions:

(1) Impose on the marine exchange an administrative fine of not more than five thousand dollars ($5,000) for each day the marine exchange does not comply with the administrator's order.

(2) Administratively revoke the authorization provided to the marine exchange by Section 445 to operate the vessel traffic service.

(d) If authorization for the marine exchange to operate the vessel traffic service is revoked pursuant to this section, the administrator shall take any action that is necessary to expeditiously establish a vessel traffic service for the Los Angeles and Long Beach harbors. The action may include the assessment of fees on vessels, port users, and ports, and the making of needed expenditures, as provided in subdivision (d) of Section 8670.21.

(Added by Stats.1991, c. 969 (A.B.134), § 2. Amended by Stats.1996, c. 362 (A.B.748), § 13; Stats.2004, c. 796 (S.B.1742), § 41.)

## Chapter 3. Wrecks and Salvage
## Article 1. Wrecks and Wrecked Property

### § 510. Duty of sheriff and citizens

The sheriff of each county shall give all possible aid and assistance to vessels stranded on its coast, and to the persons on board. He shall exert himself to save and preserve such persons, vessels, and their cargoes, and all goods and merchandise which may be cast by the sea upon the land, and to this end he may employ as many persons as he may think proper. All citizens shall aid the sheriff when required.

(Added by Stats.1937, c. 368, p. 806, § 510.)

### § 511. Reclaiming wrecked property; claim for salvage and expenses

Wrecked property may be kept or reclaimed at the time of the wreck by the owner, consignee, or other person entitled to possession; but if any person has a just claim for salvage and necessary expenses incurred in saving it, the claim shall be paid before the property can be reclaimed.

(Added by Stats.1937, c. 368, p. 806, § 511.)

### § 512. Possession by sheriff for owner; appraisal

The sheriff of any county in which any wrecked property is found, when no person entitled to possession appears, shall take possession of it in the name of the people, cause its value to be appraised by disinterested persons, and keep it in some safe place to answer the owner's claims.

(Added by Stats.1937, c. 368, p. 806, § 512.)

### § 513. Sale of perishable property; disposition of proceeds

If wrecked property is in a perishable state, the sheriff shall apply to the judge of the superior court, upon a verified petition, for an order authorizing the sheriff to sell it. If the judge is satisfied that a sale of the property would be beneficial to the persons interested, he or she shall make the order applied

for, and the property shall then be sold at public auction, as specified in the order. The proceeds, deducting the expenses of salvage, storage, and sale as settled and allowed by the judge, shall be transmitted to the Treasurer for deposit in the General Fund.

(Added by Stats.1937, c. 368, p. 806, § 513. Amended by Stats.1997, c. 930 (S.B.172), § 1.)

**§ 514. Delivery of property to claimant on payment of salvage and expenses**

If, within 90 days after wrecked property is found, any person claims the property, or its proceeds, and establishes his or her claim by evidence satisfactory to the judge of the superior court, the judge shall make an order directing the officer in whose possession the property or its proceeds may be, to deliver it to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation.

(Added by Stats.1937, c. 368, p. 807, § 514. Amended by Stats.1997, c. 930 (S.B.172), § 2.)

**§ 515. Bond required of claimant; requisites**

Before making the order, the judge shall require from the claimant a bond to the people to be approved by the judge and filed with the clerk of the court, in a penalty double the value of the property or proceeds. The bond shall be conditioned upon the payment of all damages that may be recovered against the claimant or the claimant's representatives, within three years after its date, by any person establishing title to the property or proceeds

(Added by Stats.1937, c. 368, p. 807, § 515. Amended by Stats.1982, c. 517, p. 2392, § 263; Stats.2002, c. 784 (S.B.1316), § 11.)

**§ 516. Action on forfeited bond**

If the bond becomes forfeited, the judge of the superior court, upon the application, supported by proof of the person entitled to its benefit shall make an order for its prosecution for such person's benefit, and at his risk and expense.

(Added by Stats.1937, c. 368, p. 807, § 516.)

**§ 517. Rejection of claim not be bar action for property or proceeds; deductions from damages**

The rejection by the judge of any claim shall not preclude the claimant from maintaining an action against the officer for the recovery of the property or its proceeds. If the plaintiff prevails, there shall be deducted from the damages, in addition to salvage and expenses, all the defendant's costs.

(Added by Stats.1937, c. 368, p. 807, § 517.)

**§ 518. Sale of unclaimed property; disposition of proceeds; deductions**

If, within 60 days after saving wrecked property, no claimant of the property appears, or, if within 60 days after a claim, the salvage and expenses are not paid, or a suit for the recovery of the property is not commenced, the officer who has custody of the property may sell it at public auction and transmit the proceeds of the sale, after deducting salvage, storage, property tax liens, other liens, and other expenses, to the Treasurer for deposit in the General Fund. Deduction of salvage, storage, and other expenses shall not be made, unless the amount has been determined by the superior court of the county. A copy of the order, and the evidence in its support, shall be transmitted by the judge to the Controller.

(Added by Stats.1937, c. 368, p. 807, § 518. Amended by Stats.1997, c. 930 (S.B.172), § 3; Stats.2005, c. 311 (A.B.716), § 1.)

**§ 519. Notice of sale; contents; publication and posting**

Public notice of every sale of wrecked property under the provisions of this article shall be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county, or if none is printed in the county, then by written or printed notices posted in three of the most public places in the county at least fifteen days previous to the sale. Every notice shall state the time and place of the sale and contain a particular description of the property to be sold.

(Added by Stats.1937, c. 368, p. 807, § 519.)

**§ 520. Notice of finding of property; contents**

Every sheriff into whose possession any wrecked property comes, shall forthwith cause to be published for at least two weeks in succession, in one or more of the newspapers printed in this State, a notice directed to all persons interested. The notice shall contain a minute description of the property, and of every bale, box, case, piece, or parcel, and the marks, brands, letters and figures on each. It shall state:

(a) Where the property then is and its actual condition.
(b) The name, if known, of the vessel from which it came.
(c) The names of its master and supercargo.
(d) The place where the vessel then is, and its actual condition.

(Added by Stats.1937, c. 368, p. 808, § 520.)

**§ 521. Expense of publishing notices**

The expense of publishing notices under the provisions of this article is a charge upon the property or proceeds to which it relates.

(Added by Stats.1937, c. 368, p. 808, § 521.)

**§ 522. Abandoned hulks within municipal limits; disposition; claim of ownership; fee**

(a) Any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 30 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property.

Thereafter, that municipal corporation or other public corporation or entity may, notwithstanding any other provision of law, take title to the abandoned property for purposes of abatement without satisfying any property tax lien on that property, and also may cause the property to be sold, destroyed, or otherwise disposed of in any manner it determines is expedient or convenient. Any property tax lien on the abandoned property shall be satisfied within 30 days following the sale of the abandoned property by a municipal corporation or public entity. Any sale in accordance with this section shall vest complete title in the purchaser who shall forthwith take steps to remove the property. Any proceeds derived from the sale shall be transmitted to the Treasurer for deposit in the General Fund.

(b) However, if the owner of the property securely affixes to the property a notice in plain view setting forth the owner's name and address and claim of ownership, together with the name and address of an agent or representative whom the owner may designate to act within the State of California if the owner does not reside in the state, and files a copy of the notice with the secretary of the municipal corporation or other public corporation or entity having jurisdiction or control over the lands at least 10 days prior to the removal, the municipal corporation or other public corporation or entity may not sell, destroy, or otherwise dispose of the property until the corporation or entity has first given the owner or the owner's agent, at the address specified in the claim of ownership, 15 days' notice to remove or

cause the property to be removed, and then only if the property is not removed by the owner or the owner's agent within that time or reasonable extensions of time as the corporation or entity may grant by resolution. If a registration number appears on the watercraft, the municipal corporation or other public corporation or entity shall send the notice to the last registered owner and the disposition shall be handled as a lien sale under Section 504.

(c) Any municipal corporation or other public corporation may charge a fee to any person who is determined by that municipal or other public corporation to have caused property of a type described in subdivision (a) to become abandoned as described in that subdivision within its corporate limits, in an amount not to exceed the amount of that municipal or other public corporation's actual and reasonable costs incurred pursuant to this section with respect to the abandoned property.

(Added by Stats.1939, c. 226, p. 1479, § 1. Amended by Stats.1967, c. 669, p. 2039, § 1; Stats.1981, c. 278, p. 1383, § 1; Stats.1987, c. 745, § 6; Stats.1992, c. 168 (A.B.2806), § 1; Stats.1994, c. 940 (S.B.1626), § 1.5, operative July 1, 1995; Stats.1997, c. 930 (S.B.172), § 4.)

**§ 523. Removal of vessel from public waterways by peace officers, State Lands Commission employees, lifeguards, and safety officers**

(a) Any peace officer, as described in Section 663, any employee or officer of the State Lands Commission designated by the State Lands Commission, or any lifeguard or marine safety officer employed by a county, city, or district while engaged in the performance of official duties, may remove, and, if necessary, store a vessel removed from a public waterway under any of the following circumstances:

(1) When the vessel is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, to public safety, or to the property of another.

(2) When the vessel is found upon a waterway and a report has previously been made that the vessel has been stolen or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.

(3) When the person or persons in charge of the vessel are by reason of physical injuries or illness incapacitated to an extent as to be unable to provide for its custody or removal.

(4) When an officer arrests any person operating or in control of the vessel for an alleged offense, and the officer is, by any provision of this code or other statute, required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(5) When the vessel interferes with, or otherwise poses a danger to, navigation or to the public health, safety, or welfare.

(6) When the vessel poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality.

(7) When a vessel is found or operated upon a waterway with a registration expiration date in excess of one year before the date on which it is found or operated on the waterway.

(b) Costs incurred by a public entity pursuant to removal of vessels under subdivision (a) may be recovered through appropriate action in the courts of this state.

(Formerly § 675, added by Stats.1981, c. 278, p. 1384, § 2. Amended by Stats.1987, c. 969, § 1; Renumbered § 523 and amended by Stats.1991, c. 126 (A.B.764), § 5; Stats.1997, c. 930 (S.B.172), § 5; Stats.2005, c. 311 (A.B.716), § 2.)

**§ 524. Removal of vessel from private property by peace officer**

(a) Any peace officer, as described in Section 663, may store any vessel removed from private property when the vessel is found on, or attached to, private property and a report has previously been made that the vessel has been stolen or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.

(b) Any peace officer, as described in Section 663, may, after a reasonable period of time, remove a vessel from private property if the vessel has been involved in, and left at, the scene of a boating accident and no owner is available to grant permission to remove the vessel. This subdivision does not authorize the removal of a vessel if the owner has been contacted and has refused to grant permission to remove the vessel.

(c) Nothing in this section is intended to expand the territorial jurisdiction of peace officers beyond the provisions of Sections 830.1 and 830.2 of the Penal Code.

(Formerly § 676, added by Stats.1981, c. 278, p. 1385, § 3. Renumbered § 524 and amended by Stats.1991, c. 126 (A.B.764), § 6. Amended by Stats.1997, c. 930 (S.B.172), § 6.)

**§ 525. Abandonment of vessel; consent of owner; liability for removal costs; violations; punishment**

(a) Except for urgent and immediate concern for the safety of those aboard a vessel, no person shall abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(b) The abandonment of any vessel in a manner as provided in subdivision (a) is prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of removal and disposition of the vessel.

(c) Violation of this section is an infraction and shall be punished by a fine of not less than five hundred dollars ($500), nor more than three thousand dollars ($3,000). In addition, the court may order the defendant to pay to the agency that removes and disposes of the vessel the actual costs incurred by the agency for that removal and disposition.

(d) All fines imposed and collected pursuant to this section shall be allocated as follows:

(1)(A) Eighty percent of the moneys shall be deposited in the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned, wrecked, or dismantled vessels, or parts thereof, or any other partially submerged objects which pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent. These grants shall not be utilized for abatement, removal, storage, or disposal of commercial vessels.

(B) In evaluating a grant request submitted by a local agency pursuant to subparagraph (A), the department shall place great weight on the following two factors:

(i) The existence of an active local enforcement program to control and prevent the abandonment of watercraft within the local agency's jurisdiction.

(ii) The existence of a submerged navigational hazard abatement plan at the local level which provides for the control or abatement of water hazards, including, but not limited to, abandoned watercraft, wrecked watercraft, hazardous floating debris, submerged vessels and objects, and abandoned piers and pilings.

(C) A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant.

(2) Twenty percent shall be allocated as set forth in Section 1463.001 of the Penal Code.

(Formerly § 677, added by Stats.1981, c. 278, p. 1385, § 4. Amended by Stats.1987, c. 745, § 12. Renumbered § 525 and amended by Stats.1991, c. 126 (A.B.764), § 7; Stats.1997, c. 930 (S.B.172), § 7; Stats.2005, c. 311 (A.B.716), § 3.)

**§ 526. Disposal of wrecked property, abandoned property, or property removed from a navigable waterway; notice of removal; hearing**

(a) Notwithstanding any other provision of law, any wrecked property that is an unseaworthy derelict or hulk, or abandoned property as described in Section 522, or property removed from a navigable waterway pursuant to Section 523 or 524 that is an unseaworthy derelict or hulk, may be sold or otherwise disposed of by the public agency that removed or caused the removal of the property pursuant to this section, subject to the following conditions:

(1) The property has been appraised by disinterested persons, and has an estimated value of less than two thousand dollars ($2,000).

(2) There is no discernable registration, license, hull identification number, or other identifying insignia on the property, or the Department of Motor Vehicles is unable to produce any record of the registered or legal owners or lienholders.

(3) Not less than 72 hours before the property was removed, the peace officer or authorized public employee securely attached to the property a distinctive notice stating that the property would be removed by the public agency.

(4) Within 48 hours after the removal, excluding weekends and holidays, the public agency that removed or caused the removal of the property sent notice of the removal to the registered and legal owners, if known or discovered subsequent to the removal, at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the property. A notice sent by the public agency shall be sent by certified or first-class mail.

(5) If the public agency is unable to locate the registered and legal owners of the property or persons known to have an interest in the property as provided in paragraph (4), the public agency published, or caused to be published, the notice of removal for at least two weeks in succession in one or more daily newspapers circulated in the county.

(b) The notice of removal required by paragraphs (3) to (5), inclusive, of subdivision (a) shall state all of the following:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) A description of the property removed.

(3) The location from which the property is to be or was removed.

(4) The location of the intended or actual place of storage.

(5) The authority and purpose for removal of the property.

(6) A statement that the property may be claimed and recovered within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property, and that following the expiration of the 15-day period, the property will be sold or otherwise disposed of by the public agency.

(7) A statement that the registered or legal owners or any other person known to have an interest in the property have the opportunity for a poststorage hearing before the public agency that removed, or caused the removal of, the property to determine the validity of the removal and storage if a request for a hearing is made in person or in writing to that public agency within 10 days from the date of notice; that if the registered or legal owners or any other person known to have an interest in the property disagree with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vessel in question shall not be sold or otherwise disposed of.

(c)(1) Any requested hearing shall be conducted within 48 hours of the time the request for a hearing is received by the public agency, excluding weekends and holidays. The public agency that removed the vehicle may authorize its own officers or employees to conduct the hearing but the hearing officer shall not be the same person who directed the removal and storage of the property.

(2) The failure of either the registered or legal owners or any other person known to have an interest in the property to request or attend a scheduled hearing shall not affect the validity of the hearing.

(d) The property may be claimed and recovered by its registered and legal owners, or by any other person known to have an interest in the property, within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property.

(e) The property may be sold or otherwise disposed of by the public agency not less than 15 days from the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, or the date of actual removal, whichever is later.

(f) The proceeds from the sale of the property, after deducting expenses for salvage, storage, sales costs, and any property tax liens, shall be deposited in the Abandoned Watercraft Abatement Fund for grants to local agencies, as specified in paragraph (1) of subdivision (d) of Section 525.

(g) It is the intent of the Legislature that this section shall not be construed to authorize the lien sale or destruction of any seaworthy vessel that is currently registered and operated in accordance with local, state, and federal law.

(Added by Stats.1997, c. 930 (S.B.172), § 8. Amended by Stats.2005, c. 311 (A.B.716), § 4.)

**§ 527. Appropriations; Abandoned Watercraft Abatement Fund**

It is the intent of the Legislature that a sum of not more than one million dollars ($1,000,000) be appropriated from the Harbors and Watercraft Revolving Fund to the Abandoned Watercraft Abatement Fund for grants to local agencies pursuant to paragraph (1) of subdivision (d) of Section 525 in each fiscal year and that grants from the Abandoned Watercraft Abatement Fund be matched by not less than a 10-percent contribution from the local agency receiving the grant.

(Added by Stats.1997, c. 930 (S.B.172), § 9.)

## Article 2. Salvage

**§ 530. Allowance to sheriffs and employees; limitations on amount**

Sheriffs and all persons employed by them or aiding in the recovery and preservation of wrecked property, are entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in their performance, out of the property saved. The officer having the custody of the property shall detain it until the allowance is paid or tendered. But the whole salvage claimed shall not exceed one-half of the value of the property or proceeds on which it is charged, and every agreement, order, or adjustment allowing a greater salvage is void, unless ordered and allowed by the superior court of the county.

(Added by Stats.1937, c. 368, p. 808, § 530.)

**§ 531. Statement of claim; adjustment**

Every officer to whom an order for the delivery of wrecked property or the payment of its proceeds is directed, shall present to the claimant of the property or proceeds, a written statement of the claims for salvage and expenses. If the claimant refuses to allow that amount, it shall be adjusted as provided in this article.

(Added by Stats.1937, c. 368, p. 808, § 531.)

**§ 532. Determination of disputed salvage by superior court**

If, in any case, the amount of salvage and expenses is not settled by agreement, on the application of the owner or consignee of the property, or the master or supercargo having charge at the time of the wreck, or of a claimant having an order for the property, or of a person claiming salvage or expenses, the

superior court of the county shall determine the amount of salvage and expenses in a summary way, either by itself hearing the allegations and proofs, or by referring the questions to three disinterested freeholders of the county, who shall have the same powers and shall proceed in the same manner as referees in civil actions. Their decisions as to the whole amount and as to the sums to be paid to each person interested shall be entered as the judgment of the court.

(Added by Stats.1937, c. 368, p. 808, § 532.)

**§ 534. Right to salvage; lien; certain persons not entitled to salvage; general average contribution**

Any person, other than the master, mate, or a seaman of a wrecked vessel, who rescues it, or its appurtenances or cargo from danger, is entitled to a reasonable compensation, to be paid out of the property saved. He shall have a lien for salvage upon the vessel and its appurtenances or cargo, as the case may be. A claim for salvage, as such, cannot accrue against any vessel, or its freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, is payable through a general average contribution on the property saved.

(Added by Stats.1937, c. 368, p. 809, § 534.)

## Chapter 6. Vessel Sanitation

**§ 782. Exemption of vessels from laws, ordinances or regulations with respect to marine sanitation devices; laws and rules and regulations concerning sewage discharge allowed; enforcement and inspection**

(a) Excepting laws regulating the discharge of sewage into or upon the navigable waters of any lake, reservoir, or freshwater impoundment of this state, and notwithstanding Section 660, no vessel, as defined in subdivision (e) of Section 775.5, is subject to any other state or local government law, ordinance, or regulation with respect to the design, manufacture, installation, or use within any vessel of any marine sanitation device.

(b) Notwithstanding any other provision of law, nothing in this chapter precludes or restricts a city, county, or other public agency from adopting rules and regulations with respect to the discharge of sewage from vessels.

(c) State and local peace officers may enforce state laws relating to marine sanitation devices and may inspect vessels if there is reasonable cause to suspect noncompliance with those laws.

(d) A state or local peace officer who reasonably suspects that a vessel is discharging sewage in an area where the discharge is prohibited may board that vessel, if the owner or operator is aboard, for the purpose of inspecting the marine sanitation device for proper operation and placing a dye tablet in the holding tank.

(Added by Stats.1974, c. 902, p. 1907, § 1, eff. Sept. 19, 1974. Amended by Stats.1983, c. 101, § 94; Stats.1986, c. 1119, § 12, eff. Sept. 24, 1986; Stats.1991, c. 548 (S.B.1201), § 5. Amended by Stats.2002, c. 293 (A.B.2362), § 2.)

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## DIVISION 20.
## Chapter 6.65. Unified Agency Review of Hazardous Materials Release Sites

**§ 25262. Requests for designation of administering agency to oversee site investigation and remedial action; requisite findings; factors in determining selected administering agency; finality of selection**

(a) A responsible party for a hazardous materials release site may request the committee at any time to designate an administering agency to oversee a site investigation and remedial action at the site. The committee shall designate an administering agency as responsible for the site within 45 days of the date the request is received. A request to designate an administering agency may be denied only if the committee makes one of the following findings:

(1) No single agency in state or local government has the expertise needed to adequately oversee a site investigation and remedial action at the site.

(2) Designating an administering agency will have the effect of reversing a regulatory or enforcement action initiated by an agency that has jurisdiction over the site, a facility on the site, or an activity at the site.

(3) Designating an administering agency will prevent a regulatory or enforcement action required by federal law or regulations.

(4) The administering agency and the responsible party are local agencies formed, in whole or in part, by the same political subdivision.

(b) A responsible party who requests the designation of an administering agency for a hazardous materials release site shall provide the committee with a brief description of the site, an analysis of the known or suspected nature of the release or threatened release that is the subject of required site investigation or remedial action, a description of the type of facility from which the release occurred or the type of activity that caused the release, a specification of the regulatory or enforcement actions that have been taken, or are pending, with respect to the release, and a statement of which agency the responsible party believes should be designated as administering agency for the site.

(c)(1) The committee shall take all of the following factors into account in determining which agency to designate as administering agency for a site:

(A) The type of release that is the subject of site investigation and remedial action.

(B) The nature of the threat that the release poses to human health and safety or to the environment.

(C) The source of the release, the type of facility or activity from which the release occurred, the regulatory programs that govern the facility or activity involved, and the agency or agencies that administer those regulatory programs.

(D) The regulatory history of the site, the types of regulatory actions or enforcement actions that have been taken with respect to the site or the facility or activity from which the release occurred, and the experience and involvement that various agencies have had with the site.

(E) The capabilities and expertise of the agencies that are candidates for designation as the administering agency for the site and the degree to which those capabilities and that expertise are applicable to the type of release at the site, the nature of the threat that the release poses to health and safety or the environment and the probable remedial measures that will be required.

(2) After weighing the factors described in paragraph (1) as they apply to the site, the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D) as guidelines for designating the administering agency. If more than one of the criteria apply to the site, the committee shall use its best judgment, taking into account the known facts concerning the hazardous materials release at the site and its regulatory history, in determining which agency may best serve as the administering agency. The criteria are as follows:

(A) The administering agency shall be the Department of Toxic Substances Control if one of the following applies:

(i) The department has issued an order, or otherwise initiated action, with respect to the release at the site pursuant to Section 25355, 25355.5, or 25358.3.

(ii) The department has issued an order for corrective action at the site pursuant to Section 25187.

(iii) The source of the release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the department pursuant to Chapter 6.5 (commencing with Section 25100).

(iv) The department is conducting, or has conducted, oversight of the site investigation and remedial action at the site at the request of the responsible party.

(B) The administering agency shall be the California regional water quality control board for the region in which the site is located, if one of the following applies:

(i) The California regional water quality control board has issued a cease and desist order pursuant to Section 13301, or a cleanup and abatement order pursuant to Section 13304 of the Water Code in connection with the release at the site.

(ii) The source of the release is a facility or an activity that is subject to waste discharge requirements issued by the California regional water quality control board pursuant to Section 13263 of the Water Code or that is regulated by the California regional water quality control board pursuant to Article 5.5 (commencing with Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

(iii) The California regional water quality control board has jurisdiction over the site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code.

(C) The administering agency shall be the Department of Fish and Game if the release has polluted or contaminated the waters of the state and the department has taken action against the responsible party pursuant to Section 2014 or 12015 of, or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C. Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33 U.S.C. Sec. 1321).

(D) The administering agency shall be a local agency if any one of the following circumstances is applicable:

(i) The source of the release at the site is an underground storage tank, as defined in subdivision (y) of Section 25281, the local agency is the agency described in subdivision (i) of Section 25281, and there is no evidence of any extensive groundwater contamination at the site.

(ii) The local agency has accepted responsibility for overseeing the site investigation or remedial action at the site and a state agency is not involved.

(iii) The local agency has agreed to oversee the site investigation or remedial action at the site and is certified, or has been approved, by a state agency to conduct that oversight.

(d) A responsible party for a hazardous materials release site may request the designation of an administering agency for the site pursuant to this section only once. The action of the committee on the request is a final action and is not subject to further administrative or judicial review.

(Added by Stats.1993, c. 1184 (A.B.2061), § 1. Amended by Stats.1996, c. 623 (S.B.1425), § 1; Stats.2002, c. 999 (A.B.2481), § 10.)

## Chapter 6.95. Hazardous Materials Release Response Plans and Inventory
## Article 1. Business and Area Plans

### § 25501. Definitions

Unless the context indicates otherwise, the following definitions govern the construction of this chapter:

(a) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this chapter.

(b) "Agricultural handler" means an entity identified in paragraph (5) of subdivision (c) of Section 25503.5.

(c) "Area plan" means a plan established pursuant to Section 25503 by an administering agency for emergency response to a release or threatened release of a hazardous material within a city or county.

(d) "Business" means an employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, or association. For purposes of this chapter, "business" includes a business organized for profit and a nonprofit business.

(e) "Business plan" means a separate plan for each facility, site, or branch of a business that meets the requirements of Section 25504.

(f) "Certification statement" means a statement signed by the business owner, operator, or officially designated representative that attests to all of the following:

(1) The information contained in the annual inventory form most recently submitted to the administering agency is complete, accurate, and up to date.

(2) There has been no change in the quantity of any hazardous material as reported in the most recently submitted annual inventory form.

(3) No hazardous materials subject to the inventory requirements of this chapter are being handled that are not listed on the most recently submitted annual inventory form.

(4) The most recently submitted annual inventory form contains the information required by Section 11022 of Title 42 of the United States Code.

(g)(1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in accordance with the provisions of Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA.

(h) "City" includes any city and county.

(i) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(j) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance by other than its chemical name.

(k) "Department" means the Department of Toxic Substances Control and "director" means the Director of Toxic Substances Control.

(l) "Emergency rescue personnel" means any public employee, including, but not limited to, any fireman, firefighter, or emergency rescue personnel, as defined in Section 245.1 of the Penal Code, or personnel of a local EMS agency, as designated pursuant to Section 1797.200, or a poison control

center, as defined by Section 1797.97, who responds to any condition caused, in whole or in part, by a hazardous material that jeopardizes, or could jeopardize, public health or safety or the environment.

(m) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(n) "Handler" means any business that handles a hazardous material.

(o) "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

(p) "Hazardous substance" means any substance or chemical product for which one of the following applies:

(1) The manufacturer or producer is required to prepare a MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(2) The substance is listed as a radioactive material in Appendix B of Chapter 1 of Title 10 of the Code of Federal Regulations, maintained and updated by the Nuclear Regulatory Commission.

(3) The substances listed pursuant to Title 49 of the Code of Federal Regulations.

(4) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

(q) "Hazardous waste" means hazardous waste, as defined by Sections 25115, 25117, and 25316.

(r) "Office" means the Office of Emergency Services.

(s) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, unless permitted or authorized by a regulatory agency.

(t) "Secretary" means the Secretary for Environmental Protection.

(u) "SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

(v) "Threatened release" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(w) "Trade secret" means trade secrets as defined in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(x) "Unified Program Facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraphs (4) and (5) of subdivision (c) of Section 25404.

(Added by Stats.1985, c. 1167, § 1. Amended by Stats.1990, c. 1662 (S.B.2263), § 2; Gov.Reorg.Plan No. 1 of 1991, § 121, eff. July 17, 1991; Stats.1995, c. 639 (S.B.1191), § 69; Stats.1997, c. 664 (S.B.657), § 1; Stats.2004, c. 183 (A.B.3082), § 206.)

**§ 25507. Release or threatened release of hazardous material; report; exception**

(a) Except as provided in subdivision (b), the handler or any employee, authorized representative, agent, or designee of a handler shall, upon discovery, immediately report any release or threatened release of a hazardous material to the administering agency, and to the office, in accordance with the regulations adopted pursuant to Section 25503. Each handler and any employee, authorized representative, agent, or designee of a handler shall provide all state, city, or county fire or public health or safety personnel and emergency rescue personnel with access to the handler's facilities.

(b) Subdivision (a) does not apply to any person engaged in the transportation of a hazardous material on a highway which is subject to, and in compliance with, the requirements of Sections 2453 and 23112.5 of the Vehicle Code.

(Added by Stats.1985, c. 1167, § 1. Amended by Stats.1986, c. 463, § 12, eff. July 23, 1986; Stats.1988, c. 1585, § 8.)

**§ 25515. Fines and imprisonment**

Any person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by imprisonment in the state prison for 16, 20, or 24 months or in the county jail for not more than one year, or by both the fine and imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(Added by Stats.1985, c. 1167, § 1.)

**25515.2. Criminal and civil penalties; apportionment; rewards**

(a) All criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency which is responsible for the investigation of the action.

(b) All civil penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency responsible for the investigation of the action.

(c) If a reward is paid to a person pursuant to Section 25517, the amount of the reward shall be deducted from the amount of the criminal or civil penalty before the amount is apportioned pursuant to subdivisions (a) and (b) .

(Added by Stats.1986, c. 463, § 21, eff. July 23, 1986. Amended by Stats.1992, c. 743 (A.B.2280), § 2. Amended by Stats.2002, c. 1000 (A.B.2486), § 1.)

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## DIVISION 3.
## Chapter 1. Oil and Gas Conservation
## Article 4. Regulation of Operations

### § 3208. Properly completed or abandoned wells; definitions

For the purposes of Section 3207, a well is properly completed when it has been shown, to the satisfaction of the supervisor, that the manner of producing oil or gas or injecting fluids into the well is satisfactory and that the well has maintained production of oil or gas or injection for a continuous six-month period. A well is properly abandoned when it has been shown, to the satisfaction of the supervisor, that all proper steps have been taken to isolate all oil-bearing or gas-bearing strata encountered in the well, and to protect underground or surface water suitable for irrigation or farm or domestic purposes from the infiltration or addition of any detrimental substance and to prevent subsequent damage to life, health, property, and other resources.

(Added by Stats.1939, c. 93, p. 1120, § 3208. Amended by Stats.1972, c. 898, p. 1598, § 18; Stats.1976, c. 794, p. 1839, § 6; Stats.1977, c. 13, p. 22, § 3, eff. March 21, 1977; Stats.1977, c. 112, p. 547, § 5, eff. June 28, 1977; Stats.1984, c. 278, § 5; Stats.1988, c. 1077, § 5.)

### § 3208.1. Reabandonment of wells; order, cost

(a) To prevent, as far as possible, damage to life, health, and property, the supervisor or district deputy may order the reabandonment of any previously abandoned well if the supervisor or the district deputy has reason to question the integrity of the previous abandonment. The operator responsible for plugging and abandoning deserted wells under Section 3237 shall be responsible for the reabandonment except in the following situations:

(1) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and that the well in its current condition presents no immediate danger to life, health, and property but requires additional work solely because the owner of the property on which the well is located proposes construction on the property that would prevent or impede access to the well for purposes of remedying a currently perceived future problem. In this situation, the owner of the property on which the well is located shall be responsible for the reabandonment.

(2) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and that construction over or near the well preventing or impeding access to it was begun on or after January 1, 1988, and the property owner, developer, or local agency permitting the construction failed either to obtain an opinion from the supervisor or district deputy as to whether the previously abandoned well is required to be reabandoned or to follow the advice of the supervisor or district deputy not to undertake the construction. In this situation, the owner of the property on which the well is located shall be responsible for the reabandonment.

(3) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and after that time someone other than the operator or an affiliate of the operator disturbed the integrity of the abandonment in the course of developing the property, and the supervisor is able to determine based on credible evidence, including circumstantial evidence, the party or parties responsible for disturbing the integrity of the abandonment. In this situation, the party or parties responsible for disturbing the integrity of the abandonment shall be responsible for the reabandonment.

(b) Except for the situations listed in paragraphs (1), (2), and (3) of subdivision (a), nothing in this section precludes the application of Article 4.2 (commencing with Section 3250) when its application would be appropriate.

(Added by Stats.1983, c. 919, § 1. Amended by Stats.1987, c. 1322, § 1; Stats.1996, c. 537 (S.B.2007), § 6; Stats.2000, c. 737 (A.B.2581), § 4.)

**§ 3233. Oil discharges; field rules for emergency reporting; application of section**

(a) The division may develop field rules which establish volumetric thresholds for emergency reporting by the operator of oil discharges to land associated with onshore drilling, exploration, or production operations, where the oil discharges, because of the circumstances established pursuant to paragraph (1) of subdivision (c), cannot pass into or threaten the waters of the state. The division may not adopt field rules under this section, unless the State Water Resources Control Board and the Department of Fish and Game first concur with the volumetric reporting thresholds contained in the proposed field rules. Subchapter 1 (commencing with Section 1710) of Chapter 4 of Division 2 of Title 14 of the California Code of Regulations shall apply to the adoption and implementation of field rules authorized by this section.

(b) The authority granted to the division pursuant to subdivision (a) shall apply solely to oil fields located in the San Joaquin Valley, as designated by the division. The division shall adopt the field rules not later than January 1, 1998.

(c) For purposes of implementing this section, the division, the State Water Resources Control Board, and the Department of Fish and Game shall enter into an agreement that defines the process for establishing both of the following:

(1) The circumstances, such as engineered containment, under which oil discharges cannot pass into or threaten the waters of this state.

(2) The volumetric reporting thresholds that are applicable under the circumstances established pursuant to paragraph (1).

(d) In no case shall a reporting threshold established in the field rules, where the oil discharge cannot pass into or threaten the waters of this state, be less than one barrel (42 gallons), unless otherwise established by federal law or regulation. Until field rules are adopted, emergency reporting of oil discharges shall continue as required by existing statute and regulations.

(e) An operator who discharges oil in amounts less than the volumetric thresholds adopted by the division pursuant to this section is exempt from all applicable state and local reporting requirements. Discharges of oil in amounts equal to, or greater than, the volumetric thresholds adopted by the division pursuant to this section shall be immediately reported to the Office of Emergency Services which shall inform the division and other local or state agencies as required by Section 8589.7 of the Government Code. Reporting to the Office of Emergency Services shall be deemed to be compliance with all applicable state and local reporting requirements.

(f) Oil discharges below the reporting thresholds established in the field rules shall be exempt from the emergency notification or reporting requirements, and any penalties provided for nonreporting, established under paragraph (1) of subdivision (a) of Section 13260 of the Water Code, subdivisions (a), (c), and (e) of Section 13272 of the Water Code, Section 25507 of the Health and Safety Code, Sections 8670.25.5 and 51018 of the Government Code, and subdivision (h) of Section 1722 of Title 14 of the California Code of Regulations. Oil discharge reporting requirements under Section 51018 of the Government Code shall be applicable if a spill involves a fire or explosion.

(g) This section shall not affect existing reporting or notification requirements under federal law.

(h) Nothing in this section shall be construed to relieve any party of any responsibility established by statute, regulation, or order, to clean up or remediate any oil discharge, whether reportable or exempt pursuant to this section.

(i) Reporting provided pursuant to this section is not intended to prohibit any department or agency from seeking and obtaining any supplemental postreporting information to which the department or agency might otherwise be entitled.

(j) For purposes of this section, "oil" means naturally occurring crude oil.

(Added by Stats.1996, c. 605 (A.B.1376), § 3.)

**§ 3236. Offenses and penalties for failure to comply with act**

Any owner or operator, or employee thereof, who refuses to permit the supervisor or the district deputy, or his inspector, to inspect a well, or who willfully hinders or delays the enforcement of the provisions of this chapter, and every person, whether as principal, agent, servant, employee, or otherwise, who violates, fails, neglects, or refuses to comply with any of the provisions of this chapter, or who fails or neglects or refuses to furnish any report or record which may be required pursuant to the provisions of this chapter, or who willfully renders a false or fraudulent report, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100), nor more than one thousand dollars ($1,000), or by imprisonment for not exceeding six months, or by both such fine and imprisonment, for each such offense.

(Added by Stats.1939, c. 93, p. 1127, § 3236. Amended by Stats.1983, c. 1092, § 336, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

**§ 3237. Deserted wells; plugging and abandonment order; determination of desertion; appeal of order; responsibility; cost**

(a)(1) The supervisor or district deputy may order the plugging and abandonment of a well that has been deserted whether or not any damage is occurring or threatened by reason of that deserted well. The supervisor or district deputy shall determine from credible evidence whether a well is deserted.

(2) For purposes of paragraph (1), "credible evidence" includes, but is not limited to, the operational history of the well, the response or lack of response of the operator to inquiries and requests from the supervisor or district deputy, the extent of compliance by the operator with the requirements of this chapter, and other actions of the operator with regard to the well.

(3) A rebuttable presumption of desertion arises in any of the following situations:

(A) If a well has not been completed to production or injection and drilling machinery have been removed from the well site for at least six months.

(B) If a well's production or injection equipment has been removed from the well site for at least two years.

(C) If an operator has failed to comply with an order of the supervisor within the time provided by the order or has failed to challenge the order on a timely basis.

(D) If an operator fails to designate an agent as required by Section 3200.

(E) If a person who is to acquire a well that is subject to a purchase, transfer, assignment, conveyance, exchange, or other disposition fails to comply with Section 3202.

(F) If an operator has failed to maintain the access road to a well site passable to oilfield and emergency vehicles.

(4) The operator may rebut the presumptions of desertion set forth in paragraph (3) by demonstrating with credible evidence compliance with this division and that the well has the potential for commercial production, including specific and detailed plans for future operations, and by providing a reasonable timetable for putting those plans into effect. The operator may rebut the presumption set forth in subparagraph (F) of paragraph (3) by repairing the access road.

(b) An order to plug and abandon a deserted well may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

(c)(1) The current operator, as determined by the records of the supervisor, of a deserted well that produced oil, gas, or other hydrocarbons or was used for injection is responsible for the proper plugging and abandonment of the well. If the supervisor determines that the current operator does not have the financial resources to fully cover the cost of plugging and abandoning the well, the immediately preceding operator shall be responsible for the cost of plugging and abandoning the well.

(2) The supervisor may continue to look seriatim to previous operators until an operator is found that the supervisor determines has the financial resources to cover the cost of plugging and

abandoning the well. However, the supervisor may not hold an operator responsible that made a valid transfer of ownership of the well prior to January 1, 1996.

(3) For purposes of this subdivision, "operator" includes a mineral interest owner who shall be held jointly liable for the well if the mineral interest owner has or had leased or otherwise conveyed the working interest in the well to another person, if in the lease or other conveyance, the mineral interest owner retained a right to control the well operations that exceeds the scope of an interest customarily reserved in a lease or other conveyance in the event of a default.

(4) No prior operator is liable for any of the costs of plugging and abandoning a well by a subsequent operator if those costs are necessitated by the subsequent operator's illegal operation of a well.

(5) If the supervisor is unable to determine that an operator that acquired ownership of a well after January 1, 1996, has the financial resources to fully cover the costs of plugging and abandonment, the supervisor may undertake plugging and abandonment pursuant to Article 4.2 (commencing with Section 3250).

(d)(1) Notwithstanding any other provision of this chapter, the supervisor or district deputy, at his or her sole discretion, may determine that a well that has been idle for 25 years or more and that fails to meet either of the following conditions is conclusive evidence of desertion, and may order the well abandoned:

(A) The operator is operating in compliance with a valid idle well management plan that is on file with the supervisor pursuant to paragraph (4) of subdivision (a) of Section 3206 or is covered by an indemnity bond provided under Section 3204, subdivision (c) of Section 3205, or subdivision (a) of Section 3205.2.

(B) The well meets the relevant testing standards required by the district's Idle Well Planning and Testing Program and Section 1723.9 of Title 14 of the California Code of Regulations.

(2) The supervisor or district deputy shall provide the operator a 90-day notice of warning once a determination has been reached pursuant to this subdivision that a well has been deserted. An operator may rebut the determination, made pursuant to paragraph (1), of the supervisor or district deputy by demonstrating compliance with subparagraphs (A) and (B) of paragraph (1).

(3) An order to plug and abandon a deserted well under this section due to the supervisor's or district deputy's determination of an operator's noncompliance with either subparagraph (A) or (B) of paragraph (1) may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

(Added by Stats.1955, c. 1670, p. 3002, § 1. Amended by Stats.1972, c. 898, p. 1600, § 23; Stats.1974, c. 765, p. 1684, § 10; Stats.1996, c. 537 (S.B.2007), § 7; Stats.2000, c. 737 (A.B.2581), § 8; Stats.2004, c. 433 (A.B.2830), § 1.)

## Article 4.2. Hazardous Wells

### § 3255. Operations with respect to hazardous or idle-deserted wells; orders; appeal

(a) Notwithstanding any other provision of this division, the supervisor may order that any of the following operations be carried out on any property in the vicinity of which, or on which, is located any well that the supervisor determines to be either a hazardous or an idle-deserted well:

(1) Any inspection or tests necessary to determine what action, if any, would be appropriate to effectuate the purpose of this article.

(2) The abandonment of such a well.

(3) The reabandonment of such a well.

(4) The redrilling and production of an existing well for purposes of remedying, mitigating, minimizing, or eliminating danger to life, health, and natural resources.

(5) The drilling and production of a well for purposes of remedying, mitigating, minimizing, or eliminating danger to life, health, and natural resources.

(6) Any other remedy or oilfield operation calculated to effectuate the purpose of this article.

(b) If, pursuant to this article, the supervisor orders that any operation be carried out with respect to a hazardous or idle-deserted well and such operation will, by virtue of the physical occupation or destruction of all or any part of the property or the extraction of oil or gas from such property, substantially interfere with the enjoyment of the property, the supervisor shall acquire, as provided in Section 3256, such minimal interest in the property as is necessary to carry out such operation. No such acquisition may be made pursuant to this subdivision unless the supervisor finds and determines that the public benefits to be derived therefrom in remedying, mitigating, minimizing, or eliminating danger to life, health, and natural resources will exceed the cost of such acquisition, irrespective of the manner in which such acquisition is to be funded.

(c) An order of the supervisor to carry out any of the operations listed in subdivision (a) may be appealed by the owner of the property pursuant to Article 6 (commencing with Section 3350), except that in the case of an emergency no stay of the supervisor's order shall accompany the appeal.

(Added by Stats.1976, c. 1090, p. 4932, § 1, eff. Sept. 21, 1976. Amended by Stats.1981, c. 741, p. 2903, § 13.)

## DIVISION 6.
## Part 1. Administration and Control of State Lands
## Chapter 4. Administration and Control of Swamp, Overflowed, Tide, or Submerged Lands, and Structures Thereon
## Article 1. Administration and Control Generally

### § 6301. Jurisdiction of commission; administration and control of lands

The commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State, and of the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits, including tidelands and submerged lands or any interest therein, whether within or beyond the boundaries of the State as established by law, which have been or may be acquired by the State (a) by Quitclaim, cession, grant, contract, or otherwise from the United States or any agency thereof, or (b) by any other means. All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission.

The commission shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it.

The provisions of this section do not apply to land of the classes described in Section 6403, as added by Chapter 227 of the Statutes of 1947.

(Added by Stats.1941, c. 548, p. 1879, § 1. Amended by Stats.1943, c. 980, p. 2893, § 1; Stats.1951, c. 1009, p. 2640, § 1.)

### § 6302.1. Removal of watercraft by commission; actions to recover costs

(a) The commission may remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft which is left unattended and is moored, docked, beached, or made fast to land in a position as to obstruct the normal movement of traffic or in a condition as to create a hazard to other vessels using a waterway, to public safety, or to the property of another.

(b) The commission may remove from areas under its jurisdiction any vessel, boat, watercraft, raft, or other similar obstruction which seriously interferes with, or otherwise poses a critical and immediate danger to navigation or to the public health, safety, or welfare.

(c) Through appropriate action in the courts of this state, the commission may remove or destroy any vessel, boat, watercraft, raft, or other similar obstruction which hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

(d) The commission may recover costs incurred in removal actions undertaken pursuant to this section through appropriate action in the courts of this state.

(e) For purposes of this section, "appropriate action" means any cause of action available at law or in equity.

(Added by Stats.1987, c. 969, § 3.)

## DIVISION 7.8.
## Chapter 1. General Provisions

### § 8750. Definitions

Unless the context requires otherwise, the following definitions govern the construction of this division:

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

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

(c)(1) "Best achievable protection" means the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (A) the protection provided by the measures, (B) the technological achievability of the measures, and (C) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator 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.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Commission" means the State Lands Commission.

(f) "Local government" means any chartered or general law city, chartered or general law county or any city and county.

(g) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this division, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." For the purposes of this division, a small craft refueling dock is not a "marine facility."

(h) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(i) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Rivers and Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(j) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it 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.

(k) "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.

(l) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(m) "Operator" when used in connection with vessels, marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses that vessel, terminal, pipeline, or facility. "Operator" does not include any entity which owns the land underlying the facility or the facility itself, where the entity is not involved in the operations of the facility.

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

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

(p) "Responsible party" or "party responsible" means either of the following:

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

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

(q) "Small craft refueling dock" means a fixed facility having tank storage capacity not exceeding 20,000 gallons in any single storage tank and that dispenses nonpersistent oil to small craft.

(r) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil not authorized by any federal, state, or local government entity.

(s) "State 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 of Division 1 of Title 2 of the Government Code.

(t) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(u) "Vessel" means a tanker or barge as defined in this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990. Amended by Stats.1991, c. 300 (A.B.1409), § 5, eff. Aug. 1, 1991; Stats.1991, c. 1115 (S.B.977), § 2; Stats.1992, c. 1313 (A.B.3173), § 13, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 7; Stats.1993, c. 1190 (S.B.171), §7, eff. Oct. 11, 1993; Stats.1994, c. 1010 (S.B.2053), § 212; Stats.2004, c. 796 (S.B.1742), § 42.)

**§ 8751. Application of division**

Notwithstanding any other provision of law, this division shall be applicable to all terminals, pipelines, facilities, vessels, and activities in the state, whether on lands that have been legislatively granted to local governments or on lands which remain ungranted.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

## Chapter 2. Prevention, Inspection, Response, Containment, and Cleanup Programs

**§ 8752. Use of marine facilities prohibited to noncomplying tankers or barges**

No tanker or barge may use any marine facility in the state unless the tanker or barge is in compliance with all applicable federal and state laws and regulations governing equipment, personnel, construction, financial responsibility, and operations relating to the prevention of oil spills.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

**§ 8753. Enactment of regulations and guidelines**

All rules, regulations, and guidelines required pursuant to this chapter shall be adopted by January 1, 1992.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

**§ 8754. Transfers between vessels and marine terminals; prohibitions based on past violations**

(a) The administrator may prohibit an owner or operator of a marine terminal from delivering or accepting oil to or from any tanker or barge if the administrator finds, after noticed hearing, that the owner or operator has violated this chapter and that previous convictions, judgments, or settlements for those violations occurred during the prior three years and meet all of the following criteria:

(1) The violations have not been corrected or reasonable progress toward correction has not been achieved.

(2) The violations demonstrate a recurring pattern of noncompliance.

(3) The violations pose, or have posed, a significant risk to public health and safety or to the environment.

(b) The administrator shall not order the termination of operations pursuant to subdivision (a) if the decision to deny is based, in whole or in part, on violations that were resolved through a settlement, unless the administrator presents substantial evidence proving that the violations did occur and the applicant is then given the opportunity to rebut the evidence of the administrator.

(c) The administrator may allow terminals to resume transfers to and from the tankers or barges described if, after noticed hearing, the administrator is satisfied that the owner or operator has corrected all violations and will comply with all of the provisions of this division.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990. Amended by Stats.1991, c. 1091 (A.B.1487), § 128.)

**§ 8755. Location and standards of marine terminals; regulations and guidelines**

(a) The administrator and the executive officer of the commission shall confer and propose, and the commission shall adopt, rules, regulations, guidelines, and commission leasing policies for reviewing the location, type, character, performance standards, size, and operation of all existing and proposed marine terminals within the state, whether or not on lands leased from the commission, and all other marine facilities on lands under lease from the commission to minimize the possibilities of a

discharge of oil. Rules, regulations, and guidelines adopted by the commission shall not conflict with regulations of the administrator or the Coast Guard. The commission shall ensure that the rules, regulations, guidelines, and commission lease covenants provide the best achievable protection of public health and safety and the environment. Any rules, regulations, and guidelines governing the location of a marine terminal on lands under lease from a local government or port district shall not include provisions for review by the commission of any specific location, provided the location chosen or approved by the local government meets standards specified in the rules, regulations, and guidelines.

(b) This section shall not apply to any aboveground oil storage tank located entirely onshore which is subject to inspection programs and regulation under Chapter 6.67 (commencing with Section 25270) of Division 20 of the Health and Safety Code. This section shall include pipelines that are within or part of marine terminals. This section shall not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

(c) The commission shall consult with the administrator, the State Interagency Oil Spill Committee, and other affected local and federal agencies with respect to the rules, regulations, and guidelines. The consultation with the administrator shall ensure, at a minimum, consistency with the requirements for vessels that the administrator adopts under Section 8670.17 of the Government Code.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1314 (S.B.2025), § 8.)

**§ 8756. Periodic review of regulations and guidelines**

The commission shall periodically review and accordingly modify its rules, regulations, guidelines, and commission leasing policies to ensure that all operators of marine terminals within the state and marine facilities under the commission's jurisdiction always provide the best achievable protection of the public health and safety, and the environment. This section shall not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

**§ 8757. Inspection of marine facilities**

(a) The commission shall inspect or cause to be inspected, on a regular basis, all marine facilities, along with associated equipment and shall monitor their operations and the effects on public health, safety, and the environment. These inspection and monitoring activities shall, to the greatest extent possible, be coordinated with federal, state, and local agencies having lawful jurisdiction. The commission shall maintain a record of these activities for each marine facility.

(b) Any such inspection conducted under this chapter shall be coordinated to the maximum extent with other state, federal, and local agencies. The commission is specifically encouraged to enter into agreements that would permit other agencies with existing inspection programs, including, but not limited to, the Division of Oil and Gas, the California Coastal Commission, and the State Water Resources Control Board, to conduct the inspections required in this chapter. This section does not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1314 (S.B.2025), § 9.)

**§ 8758. Marine facility operations manual; updating and modification of manuals; exemptions**

(a) Each operator of a marine facility shall prepare an operations manual describing equipment and procedures which the operator employs or will employ to protect public health and safety, and the environment and to prevent oil spills. The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the marine facility. The operations manual shall be submitted for approval to the commission.

(b) Every existing operator shall submit a manual within one year after the commission has adopted a program of rules, regulations, and guidelines as specified in this section.

(c) The commission shall approve the operations manual if the manual meets the governing rules, regulations, and guidelines adopted pursuant to subdivision (b). The commission shall deny approval of the operations manual if the commission finds the operations manual is not consistent with the rules, regulations, and guidelines. If the commission denies approval, it shall provide written reasons for its decision. The operator shall, within 90 days, submit a new manual responding to the reason for refusal and incorporating any suggested modifications.

(d) The operations manual shall be updated as necessary pursuant to the findings in the hazards and operability study or as when facility operations or technology change.

(e) The commission may require modification of the operations manual of any operator within its jurisdiction if the commission finds that the manual is no longer consistent with the rules, regulations, and guidelines adopted pursuant to subdivision (b).

(f) Once an operator's operations manual has been approved, all equipment and operations of the operator's marine facility shall be maintained or be carried out in accordance with the operations manual.

(g) All vessels docked at any marine facility in the state shall comply with the terms of the operations manual of the marine facility.

(h) The commission shall report to the administrator each marine facility whose operations manual is denied after the second submission. Failure to gain approval after the second submission may be determined by the administrator to be a violation of Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code. The administrator shall take any action he or she determines to be necessary.

(i) This section does not apply to pipelines that are used exclusively to transport petroleum products and are subject to the jurisdiction of the State Fire Marshal under either state or federal law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

**§ 8759. Reimbursement for expenses**

The commission shall be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable expenses undertaken under this division.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

**§ 8760. Consultation with other agencies**

The commission shall consult with the administrator, other state agencies, and agencies of the federal government, such as the United States Coast Guard and the Department of Transportation, to the maximum extent feasible, before undertaking actions pursuant to this division.

(Added by Stats.1990, c. 1248 (S.B.2040), § 19, eff. Sept. 24, 1990.)

## DIVISION 7.9.

### § 8780. Short title

This division shall be known and may be cited as the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

### § 8781. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) Thirty years ago the people of California passed the California Coastal Zone and Conservation Act of 1972 after a disastrous oil spill that affected hundreds of miles of coast and severely affected the coastal economy.

(b) A clean and healthy coastal environment is critical to maintaining a vibrant coastal economy, including opportunities for sustainable fisheries, flourishing tourism, and healthy recreation.

(c) The coastal communities contribute billions of dollars and hundreds of thousands of jobs to the state economy.

(d) Much of the oil extracted off California's coast is highly viscous, the refining of which results in heavy byproducts such as fuel oil and coke, which tend to be shipped to overseas markets. The storage and shipment of such byproducts will also have air quality impacts.

(e) There is significant internal shipment of oil by vessel between the San Francisco Bay area and the Los Angeles area.

(f) Although vessels transporting oil are eventually required to be double hulled, this will not be completed until January 1, 2015.

(g) The thousands of sea birds that have been injured or killed in 2001 and 2002 by oil leaking from a freighter that sank off California's coast in 1953 are a strong reminder of the serious consequences of vessel mishaps.

(h) One of the results of vessel traffic along the central coast and into the ports of the Los Angeles and San Francisco areas is tons of oxides of nitrogen emitted into the air each day, which could negate efforts made on land to meet federal ozone standards and other public health air quality goals.

(i) Current, accessible and accurate data regarding oil transportation is critical to having adequate information of the potential environmental quality, public health, and environmental justice consequences that must be analyzed by state and local agencies for environmental impact reports and statements, emergency response planning, permit issuance, and air quality mitigation efforts.

(j) Tracking trends in internal shipment of oil is necessary to promote public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment in order to protect and to preserve the ecological balance of California's coastal zone, coastal waters, and coastal economy.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

### § 8782. Definitions

Unless the context requires otherwise, the following definitions govern the construction of this division:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor under Section 8670.4 of the Government Code.

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

(c) "Commission" means the State Lands Commission.

(d) "Internal shipment of oil" means the loading, transporting by vessel, and offloading of oil that originates and terminates at the San Francisco Bay area and the Los Angeles and Long Beach

area, or points in between. Internal shipment of oil does not include lightering, as defined in paragraph (4) of subdivision (l) of Section 790 of Title 14 of the California Code of Regulations.

(e) "Marine facility" means any facility of any kind, other than a vessel, that is or was used for the purpose of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters, unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. A drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." A small craft refueling dock is not a "marine facility."

(f) "Marine terminal" means any facility used for transferring oil to or from tankers or barges. A marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(g) "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.

(h) "Operator," when used in connection with a vessel means any person or entity that owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of, or uses, that vessel.

(i) "Person" means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, or association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, and the federal government or any department or agency thereof to the extent permitted by law.

(j) "Responsible party" or "party responsible" means the "Responsible party" or "Party responsible" means the owner of the oil or a person or entity who accepts responsibility for the oil for purposes of this division.

(k) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(l) "Vessel" means a tanker or barge as defined in this section.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8783. Oil Transfer and Transportation Emission and Risk Reduction Form**

(a) The commission shall develop a form that is to be completed by the responsible party engaged in the internal shipment of oil. The form shall be known as the "Oil Transfer and Transportation Emission and Risk Reduction Form." The form shall be designed to enable the commission to obtain and track the amount and type of oil transported, as well as the name of the vessel, the vessel's route, and air emissions relating to the internal shipment of that oil.

(b) The form shall contain, but need not be limited to, all of the following information:

(1) The name, address, point of contact, and telephone number of the responsible party.

(2) The name of the vessel transporting the oil.

(3) The type and amount of oil being transported.

(4) The source of crude oil.

(5) The name and location of any terminal that loaded the vessel.

(6) The name and location of any terminal that discharged the tanker or barge.

(7) The dates of travel and the route.

(8) The type of engine and fuel used to power the tanker or barge-towing vessel.

(9) The estimated amount and type of air emissions. To the extent practicable, the emissions factors developed by the United States Environmental Protection Agency shall be used to

estimate the amount of air emissions. The form shall be designed to ensure that charter vessel air emissions are not counted more than once.

(10) An indication of whether the reason for the internal shipping of oil was due to a temporary shutdown or partial shutdown of a key refinery facility.

(11) On and after January 1, 2004, if Division 36 (commencing with Section 71200) is repealed pursuant to Section 71271, the amount of any ballast discharge and the location of the discharge.

(c) The form shall be filed with the commission on a quarterly basis by the responsible party engaged in the internal shipment of oil for the activities of the preceding quarter.

(d) In developing the form and the reporting process, the commission shall consult with the interested parties including operators, responsible parties, and the International Maritime Organization.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8784. Report**

(a) On or before April 1 of each year, for the calendar years 2004 to 2009, inclusive, the commission shall file a report with the Legislature summarizing the information and including all of the following:

(1) A description of any trends in the total number of trips by oil type, amount of shipment, and source of oil.

(2) The number of transfers due to refinery shutdowns.

(3) The location of air emissions and ballast discharge, and the type of vessel used during those events.

(4) A discussion of any other pertinent issues that the commission determines should be included.

(b) The commission shall transmit a copy of the report to any interested agency or member of the public, upon request.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8785. Consultation with other state and federal agencies**

The commission shall consult with the administrator, other state agencies, and agencies of the federal government, including, but not limited to, the United States Coast Guard and the federal Department of Transportation, to the maximum extent feasible, before undertaking actions under this division.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8786. Reimbursement of administrative costs**

The administrator shall reimburse the commission for the costs of administering this division from the Oil Spill Prevention and Administration Fund, pursuant to paragraph (8) of subdivision (e) of Section 8670.40 of the Government Code.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8787. Application of division**

This division applies to all terminals, pipelines, vessels, and activities in the state, whether on lands that have been granted by the Legislature to local governments or on lands that remain ungranted.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8788. Confidentiality of information**

Any information collected under this division for the purpose of explaining why oil was transferred shall be kept confidential and reported only in the aggregate by the commission, in a manner that protects the competitive nature of the information.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**§ 8789. Duration of division**

This division shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(Added by Stats.2002, c. 512 (A.B.2083), § 2.)

**DIVISION 21.**

**Chapter 3. Establishment and Functions of the State Coastal Conservancy**

**§ 31116. Grants to nonprofit organization; land acquisition or improvement or development of a project; agreements; conditions**

(a) Funds may be granted to a nonprofit organization under this division if the nonprofit organization enters into an agreement with the conservancy, on such terms and conditions as the conservancy specifies.

(b) In the case of a grant for land acquisition, the agreement shall provide all of the following:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy shall approve the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt to be incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a conservancy grant shall be subject to the approval of the conservancy and a new agreement sufficient to protect the interest of the people of California shall be entered into with the transferee.

(5) If any essential term or condition is violated, title to all interest in real property acquired with state funds shall immediately vest in the state.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state unless another appropriate public agency or nonprofit organization is identified by the conservancy and agrees to accept title to all interest in real property.

Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall set forth the reversionary interest of the state.

(c) The conservancy shall also require an agreement sufficient to protect the public interest in any improvement or development constructed under a grant to a nonprofit organization for improvement and development of a project under this division. The agreement shall particularly describe any real property which is subject to the agreement, and it shall be recorded by the conservancy in the county in which the real property is located.

(d) Any funds collected from a nonprofit organization pursuant to an agreement regarding a grant shall be deposited in the Nonprofit Organization Land Trust Account, which is hereby created, in the State Coastal Conservancy Fund.

(Added by Stats.1982, c. 67, p. 201, § 2, eff. Feb. 28, 1982.)

## DIVISION 36.
## Chapter 1. General Provisions

### § 71200. Definitions

Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) "Ballast tank" means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) "Ballast water" means * * *water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) "Board" means the State Water Resources Control Board.

(d) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(e) "Commission" means the State Lands Commission.

(f) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(g) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(h) "Hull fouling" means the attachment or association of marine organisms to the submerged portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains.

(i) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) "Nonindigenous species" means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(k) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(l) "Person" means an individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also means a city, county, city and county, district, commission, the state, or a department, agency, or political subdivision of the state, an interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(m) "Sediments" means * * *matter settled out of ballast water within a vessel.

(n) "Submerged portion of a vessel" means all parts of a vessel's hull and structures that are submerged in water when the vessel is loaded to the deepest permissible legal draft.

(o) "Waters of the state" means * * *surface waters, including saline waters, that are within the boundaries of the state.

(p) "Vessel" means a vessel of 300 gross registered tons or more.

(q) "Voyage" means any transit by a vessel destined for a California port or place from a port or place outside of the coastal waters of the state.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 1; Stats.2007, c. 370 (A.B.740), §1.)

**§ 71201. Application of division; short title; purpose**

(a) This division applies to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel, and to all hull fouling.

(c) This division may be known, and may be cited, as the "Marine Invasive Species Act."

(d) The Legislature finds and declares that the purpose of this division is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 2; Stats.2007, c. 370 (A.B.740), §2.)

**§ 71201.5. Construction with other laws**

This division does not authorize the discharge of oil, noxious liquids, or other pollutants, in a manner prohibited by state, federal, or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 3.)

**§ 71201.7. Rules and regulations**

The commission shall adopt regulations necessary to implement this division, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.2003, c. 491 (A.B.433), § 4.)

**§ 71202. Exempted vessels**

This division does not apply to any of the following vessels:

(a) A vessel of the armed forces, as defined in paragraph (14) of subsection (a) of Section 1322 of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to subsection (n) of Section 1322 of Title 33 of the United States Code.

(b) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 5.)

## Chapter 2. Ballast Water Management Requirements

**§ 71203. Master, operator, or person in charge of vessel; duties and responsibilities**

(a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b)(1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 6.)

**§ 71204. Obligations of master, owner, operator or person in charge; minimization of uptake and release of nonindigenous species**

Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.

(2) Areas near a sewage outfall.

(3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.

(4) Areas where tidal flushing is known to be poor or in turbid waters.

(5) In darkness when bottom-dwelling organisms may rise up in the water column.

(6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.

(d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements <u>in</u> port or in drydock, to remove <u>fouling organisms and</u> sediments, and dispose of * * * <u>those organisms and</u> sediments in accordance with local, state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f)<u>(1)</u> Remove <u>hull</u> fouling organisms from hull, piping* * *<u>, propellers, sea chests, and other submerged portions of a vessel,</u> on a regular basis, and dispose of * * * removed substances in accordance with local, state, and federal law.

<u>(2) For purposes of paragraph (1), prior to and until the date that the regulations described in Section 71204.6 are adopted, "regular basis" means any of the following:</u>

<u>(A) No longer than by the date of expiration on the vessel's full-term Safety Construction Certificate or an extension of that expiration date.</u>

(B) No longer than by the date of expiration of the vessel's full-term United States Coast Guard Certificate of Inspection or an extension of that expiration date by the United States Coast Guard.

(C) No longer than 60 months since the time of the vessel's last out-of-water drydocking. The commission may approve a time extension to this period.

(3) In water cleaning that is performed on the submerged portions of a vessel while in the waters of the state shall be conducted using best available technologies economically achievable, and designed to minimize the release of coating and biological materials, cleaning agents, and byproducts of the cleaning process into the surrounding waters. The cleaning shall be performed in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship's officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel's ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 7; Stats.2007, c. 370 (A.B.740), §3.)

**§ 71204.2. Management practices in effect until implementation of regulations**

Prior to and until the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the EEZ shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the waters of the state.

(b) Retain all ballast water on board the vessel.

(c)(1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

(Added by Stats.2003, c. 491 (A.B.433), § 8.)

**§ 71204.3. Management practices upon and after implementation of regulations**

Commencing on the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the Pacific Coast Region shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the coastal waters of the state.

(b) Retain all ballast water on board the vessel.

(c)(1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

(Added by Stats.2003, c. 491 (A.B.433), § 9.)

**§ 71204.5. Deadline for implementation of regulations; scope; persons subject to**

(a) On or before January 1, 2005, the commission shall adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state. The regulations shall include, as appropriate, restrictions or prohibitions on discharge of ballast water containing nonindigenous species into areas in and outside estuaries and into ocean areas shown to have a capacity to retain organisms.

(b) Subject to Section 71203, and commencing no later than July 1, 2005, the master, operator, or person in charge of a vessel arriving at a California port or place from a port or place within the Pacific Coast Region shall comply with these regulations.

(Added by Stats.2003, c. 491 (A.B.433), § 10.)

**<u>§ 71204.6. Regulations governing management of hull fouling on vessels arriving at a California port or place</u>**

<u>On or before January 1, 2012, the commission, in consultation with the board, the United States Coast Guard, and a technical advisory group consisting of interested persons including, but not limited to, shipping, port, and environmental conservation representatives, shall develop and adopt regulations governing the management of hull fouling on vessels arriving at a California port or place. The commission shall consider vessel design and voyage duration in developing the regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state.</u>

(Added by Stats.2007, c. 370 (A.B.740), §4.)

**§ 71204.7. Regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems; scope**

(a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c)(1) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2008, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of Section 71205.3 would apply to that vessel.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance, or that the applicant has failed to provide the commission with required test results and evaluations.

(d) The commission shall not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(e) The commission shall disseminate to the public the test results and evaluations regarding experimental ballast water treatment systems described in this section.

(Added by Stats.2003, c. 491 (A.B.433), § 11. Amended by Stats.2006, c. 292 (S.B. 497), § 2.)

**§ 71204.9. Recommendations on specific performance standards; report to legislature; advisory panel**

(a)(1) On or before January 31, 2006, the commission, in consultation with the board and in consideration of the advisory panel recommendations described in subdivision (b), shall submit to the Legislature and make available to the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. The performance standards shall be based on the best available technology economically achievable and shall be designed to protect the beneficial uses of affected, and potentially affected, waters. If the commission, based on the best available information, and in consultation with the board and in consideration of the advisory panel recommendations, determines that it is technologically and economically achievable to prohibit the discharge of nonindigenous species, the commission shall include this recommendation in the report to the Legislature.

(2) As appropriate, the commission may recommend different performance standards for vessels arriving from mid-ocean waters, for vessels that travel exclusively within the Pacific Coast Region, for new or existing vessels, or for different vessel types. Each set of performance standards shall be based on the best available technology economically achievable for the described category of vessel.

(b)(1) The commission shall convene and consult with an advisory panel in developing the report required by subdivision (a). The advisory panel shall be comprised of persons concerned with performance standards for the discharge of treated ballast water. The advisory panel shall include, but not be limited to, representatives from one or more California regional water quality control boards, the Department of Fish and Game, the United States Coast Guard, the United States Environmental

Protection Agency, and persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and panel members.

(2) The advisory panel shall make recommendations regarding the content, issuance, and implementation of the performance standards to the commission.

(3)(A) The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's Web site. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include a brief general description of the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The advisory panel shall submit its recommendations to the commission on or before July 1, 2005.

(Added by Stats.2003, c. 491 (A.B.433), § 12.)

**§ 71205. Required written records; contents**

(a)(1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port or place, shall provide the information described in subdivision (c) in electronic or written form to the commission upon the vessel's departure from each port or place of call in California.

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port or place of call in California.

(c)(1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters ($m^3$).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of * * * ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of * * * ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, <u>that</u> shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

<u>(e)(1) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall provide the information described in subdivision (f) in electronic or written form to the commission annually upon request of the commission. The master, owner, operator, agent, or person in charge of the vessel shall submit that information within 60 days of receiving a written or electronic request from the commission. For purposes of this paragraph, the reporting shall begin on January 1, 2008, and continue until the date that the regulations described in Section 71204.6 are adopted.</u>

<u>(2) The information described in subdivision (f) shall be submitted using a form developed by the commission.</u>

<u>(f) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall maintain in written or electronic form, records that include the following information:</u>

<u>(1)(A) Date and location of drydocking events.</u>

<u>(B) Whether the vessel in general, and the submerged portion of the vessel, sea chests, anchors, and associated chains in particular, were cleaned during a drydocking event.</u>

<u>(2) Date and geographic location of all in water cleaning of the submerged portion of the vessel.</u>

<u>(3)(A) Date and geographic location of all antifouling paint applications to the vessel.</u>

<u>(B) The manufacturer and brand name of the antifouling paint applied to the vessel.</u>

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 13; Stats.2007, c. 370 (A.B.740), §5.)

**§ 71205.3. Regulations to be adopted by January 1, 2008; contents; technology review to be submitted to legislature**

(a) On or before January 1, 2008, the commission shall adopt regulations that do all of the following:

(1) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the implementation schedule for the interim performance standards for the discharge of ballast water in accordance with Table x-2 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020, as approved by the commission on January 26, 2006.

(b) On or before January 1, 2008, for the interim performance standards specified in paragraph (1) of subdivision (a) that have to be complied with in 2009, as specified in paragraph (2) of subdivision (a), and not less than 18 months prior to the scheduled compliance date specified in paragraph (2) of subdivision (a) for each subsequent class and the date for implementation of the final performance standard, as specified in paragraph (3) of subdivision (a), the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

(Added by Stats.2006, c. 292 (S.B.497), § 3.)

**§ 71206. Compliance assessment**

(a) The commission, in coordination with the United States Coast Guard, shall take samples of ballast water and sediment from at least 25 percent of the arriving vessels subject to this division, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division. The commission shall provide to the board copies of all sampling results.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the commission, upon request of that commission, the records required by Section 71205.

(c) The commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 14.)

**§ 71207. Regulatory authority of a state agency, board, commission or department; scope of authority; enforcement; civil and criminal liability; penalties**

(a) This division describes the state program to regulate the discharge or release of ballast water and other vectors of nonindigenous species from vessels regulated pursuant to this division. Prior to January 1, 2010, a state agency, board, commission, or department shall not impose a requirement, pertaining to the discharge or release of ballast water and other vectors of nonindigenous species from a vessel regulated pursuant to this division, that is different from the requirements set forth in this division, unless that action is mandated by federal law.

(b) Nothing in this division restricts a state or local agency, board, commission, or department, or a subdivision of one of those entities, from enforcing this division, if the total fines imposed by those entities do not exceed the amount of the fines set forth in Section 71216.

(c) A person who violates this division is subject to civil and criminal liability in accordance with Chapter 5 (commencing with Section 71216).

(d) The commission may require a vessel operating in violation of this division to depart the waters of the state and exchange, treat, or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 15; Stats.2006, c. 292 (S.B.497), § 4.)

## Chapter 4. Marine Invasive Species Control Fund

### § 71215. Creation; appropriation; administration; fee assessment and collection

(a)(1) The Marine Invasive Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used solely to carry out this division.

(2) All money accruing to the Exotic Species Control Fund shall be transferred to the Marine Invasive Species Control Fund.

(b)(1) The commission shall administer the fund in accordance with this chapter.

(2) The commission shall establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out this division. The fee may not exceed one thousand dollars ($1,000) for each voyage, as described in subdivision (c). This amount may be adjusted for inflation every two years.

(3) In establishing fees, the commission shall consult with a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives.

(4) The commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The State Board of Equalization, in accordance with Part 22.5 ( commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, shall collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Marine Invasive Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Marine Invasive Species Control Fund.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 23.)

## Chapter 5. Civil and Criminal Penalties and Liability

### § 71216. Intentional or negligent failure to comply; civil penalties; civil complaint procedures; review; alternative remedies

(a) Except as provided in subdivision (b) or (c), a person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars ($27,500) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) A person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars ($27,500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) A person who, knowingly and with intent to deceive, falsifies a ballast water control report form, or knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by this division, may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars ($27,500) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The executive officer of the commission may issue a complaint to a person on whom civil liability may be imposed pursuant to this division. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. A person served with a complaint pursuant to this subdivision may, within 30 days after service of the complaint, request a hearing by filing with the executive officer a notice of defense, as described in Section 11506 of the Government Code. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period. If a hearing is requested by the person, it shall be conducted within 30 days after the executive officer receives the notice of defense. If no notice of defense is filed within 30 days after service of the complaint, the executive officer shall issue an order setting liability in the amount proposed in the complaint unless the executive officer and the person have entered into a settlement agreement, in which case the executive officer shall issue an order setting liability in the amount specified in the settlement agreement. If the person has not filed a notice of defense or if the executive officer and the person have entered into a settlement agreement, the order shall not be subject to review by a court or agency.

(e) A hearing required pursuant to this section shall be conducted by an independent hearing officer, in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting a hearing required pursuant to this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount, if any, of the civil penalty to be imposed.

(f) An order setting civil liability and issued pursuant to this section is effective and final upon issuance. The violator shall pay any penalty within 30 days of service, unless he or she seeks judicial review pursuant to subdivision (g), in which case he or she shall pay any penalty within 30 days of service of the court's order setting civil liability. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer that the person served is liable for a civil penalty, a person so served may file a petition for writ of mandate for review of the decision pursuant to Section 11523 of the Government Code. A person who fails to file the

petition within the 30-day period shall not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern a proceeding conducted pursuant to this subdivision. In a proceeding pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) An order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing date of the complaint as specified in subdivision (d).

(i) A provision of this chapter or a ruling of the executive officer shall not be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the executive officer, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil and criminal penalties against a person who violates this division.

(j) In lieu of a complaint pursuant to subdivision (d) to impose administrative civil penalties set forth in subdivisions (a), (b), and (c), the Attorney General, at the request of the commission, may bring an action in superior court, in the name of the people of the State of California, to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil penalties in the amounts set forth in subdivisions (a), (b), and (c).

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 25; Stats.2006, c. 292 (S.B.497), § 6.)

**§ 71217. Criminal liability; punishment**

A person who violates subdivision (c) of Section 71216 is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than one year.

(Added by Stats.2003, c. 491 (A.B.433), § 26.)

## Chapter 6. Repeal

**§ 71271. Duration of division**

If a federal program and regulations similar to the program and regulations developed pursuant to this division are established and implemented, the commission shall submit a report to the Legislature within eight months of the implementation of the federal program. The report shall compare the federal program with the program described in this division and make a finding as to the federal program's relative effectiveness in preventing the introduction of marine invasive species from vessels visiting California. The commission shall recommend repeal of the program described in this division only if it finds that the federal program is equally or more effective at implementing and funding effective controls on the release of aquatic invasive species into the waters of the state than the program described in this division.

(Added by Stats.1999, c. 849 (A.B.703), § 1. Amended by Stats.2003, c. 491 (A.B.433), § 27; Stats.2006, c. 292 (S.B.497), § 7.)

## DIVISION 38.
## Chapter 1. Findings and Declarations

**§ 72400. Legislative findings and declarations; marine sanctuaries; prohibition of certain releases from large passenger vessels and oceangoing ships**

The Legislature finds and declares both of the following:

(a) California is home to four of the 13 national marine sanctuaries. These areas support some of the world's most diverse marine ecosystems and are home to numerous mammals, seabirds, fish, invertebrates, and plants.

(b) The protection and enhancement of the quality of the marine waters of the state and marine sanctuaries, and the protection of public health and the environment, requires that the release from large passenger vessels and oceangoing ships of hazardous waste, other waste, sewage sludge, and oily bilgewater, into the marine waters of the state and marine sanctuaries, and the release of graywater by large passenger ships into the marine waters of the state, should be prohibited.

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2004, c. 764 (A.B.2672), § 1; Stats.2005, c. 588 (S.B.771), § 6.)

**§ 72401. Legislative findings and declarations; sewage and graywater from large passenger vessels and oceangoing ships; amendment of federal legislation**

(a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state requires that the release of sewage from large passenger vessels, and the release of sewage and graywater from oceangoing ships with sufficient holding tank capacity, into the marine waters of the state should be prohibited.

(b) The Legislature intends to request the Congress of the United States to amend the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 and following) to provide California with authority similar to that granted to the State of Alaska by Public Law 106-554, to regulate the release of sewage from large passenger vessels and oceangoing ships in the marine waters of the state.

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

(Added by Stats.2005, c. 588 (S.B.771), § 8.)

## Chapter 2. Definitions

**§ 72410. Definitions**

(a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) "Board" means the State Water Resources Control Board.

(c) "Commission" means the State Lands Commission.

(d) "Graywater" means drainage from dishwasher, shower, laundry, bath, and washbasin drains, but does not include drainage from toilets, urinals, hospitals, or cargo spaces.

(e) "Hazardous waste" has the meaning set forth in Section 25117 of the Health and Safety Code, but does not include sewage.

(f) "Large passenger vessel" or "vessel" means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(3) Oceangoing ships, as defined in subdivision (j).

(g) "Marine waters of the state" means "coastal waters" as defined in Section 13181 of the Water Code.

(h) "Marine sanctuary" means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(i) "Medical waste" means medical waste subject to regulation pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(j) "Oceangoing ship" means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places.

(k) "Oil" has the meaning set forth in Section 8750.

(l) "Oily bilgewater" includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(m) "Operator" has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(n) "Other waste" means photography laboratory chemicals, dry cleaning chemicals, or medical waste.

(o) "Owner" has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(p) "Release" means discharging or disposing of wastes into the environment.

(q) "Sewage" has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, including material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

(r) "Sewage sludge" has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

(s) "Sufficient holding tank capacity" means a holding tank of sufficient capacity to contain sewage and graywater while the oceangoing ship is within the marine waters of the state.

(t) "Waste" means hazardous waste and other waste.

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2003, c. 742 (S.B.1074), § 9; Stats.2004, c. 764 (A.B.2672), § 2; Stats.2005, c. 588 (S.B.771), § 9.)

## Chapter 3. Prohibited Releases

### § 72420. Release of sewage sludge or oily bilgewater from vessel into marine waters prohibited

(a) If the appropriate federal agencies approve an application made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel or oceangoing ship may not release, or permit anyone to release, any sewage sludge from the vessel into the marine waters of the state or a marine sanctuary.

(b) If the Administrator of the United States Environmental Protection Agency approves the application for sewage release made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of an oceangoing ship with sufficient holding tank capacity may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state .

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2005, c. 588 (S.B.771), § 10.)

### § 72420.1. Large passenger vessels to be prohibited from releasing sewage

(a) If the Administrator of the United States Environmental Protection Agency approves the application for sewage release made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state.

(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

(Added by Stats.2005, c. 588 (S.B.771), § 11.)

**§ 72420.2. Prohibited releases from large passenger vessels and oceangoing ships**

(a) An owner or operator of a large passenger vessel shall not release, or permit anyone to release, from the vessel, graywater into the marine waters of the state.

(b) An owner or operator of a large passenger vessel or oceangoing ship shall not release, or permit anyone to release, from the vessel, hazardous waste, other waste, or oily bilgewater into the marine waters of the state or a marine sanctuary.

(c) An owner or operator of an oceangoing ship with sufficient holding tank capacity shall not release, or permit anyone to release, from the vessel, graywater into the marine waters of the state.

(Added by Stats.2005, c. 588 (S.B.771), § 12.)

**§ 72421. Notification after releases of graywater, sewage, hazardous waste, other waste, sewage sludge, or oily bilgewater**

(a) The owner or operator shall notify the Office of Emergency Services immediately, but not longer than 30 minutes, after discovery of any of the following:

(1) A large passenger vessel release of graywater into the marine waters of the state.

(2) Until January 1, 2010, a large passenger vessel release of sewage into the marine waters of the state or a marine sanctuary.

(3) A large passenger vessel or oceangoing ship release of hazardous waste, other waste, sewage sludge, or oily bilgewater into the marine waters of the state or a marine sanctuary.

(4) An oceangoing ship with sufficient holding tank capacity release of sewage or graywater into the marine waters of the state or a marine sanctuary.

(b) The owner or operator shall include all of the following in the notification required pursuant to subdivision (a):

(1) Date of the release.

(2) Time of the release.

(3) Location, by latitude and longitude, of the release.

(4) Volume of the release.

(5) Source of the release.

(6) Remedial action taken to prevent future releases.

(c) The Office of Emergency Services shall transmit the notification required by subdivision (a) to the board and the Department of Fish and Game immediately, but not longer than 30 minutes, after receiving the notification.

(Added by Stats.2005, c. 588 (S.B.771), § 15. Amended by Stats.2006, c. 292 (S.B.497), § 8.)

**§ 72423. Oceangoing ships; hold or transfer of sewage and graywater**

An oceangoing ship with sufficient holding tank capacity and capability for transfer shall either hold on board or shall transfer sewage and graywater to a pumpout facility, if that facility is available and accessible for the oceangoing ship where the ship is docked, and shall not discharge sewage or graywater within the marine waters of the state.

(Added by Stats.2005, c. 588 (S.B.771), § 16. Amended by Stats.2006, c. 292 (S.B.497), § 9.)

**§ 72425. Recordkeeping requirements for oceangoing vessels; submission to commission and board**

(a)(1) If the master, owner, operator, agent, or person in charge of an oceangoing ship has operated, or has caused to be operated, the oceangoing ship in the marine waters of the state during 2006, that master, owner, operator, agent, or person in charge shall provide the information described in subdivision (b) in electronic or written form to the commission upon the vessel's departure from its first port or place of call in California beginning in 2006.

(2) The information described in subdivision (b) shall be submitted on a form developed by the commission.

(b) The master, owner, operator, or person in charge of the oceangoing vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(1) Vessel information, including all of the following:

(A) Name.

(B) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(C) Vessel type.

(D) Owner or operator.

(E) Gross tonnage.

(F) Keel laid date.

(G) Port of registry.

(H) Typical or required number of crew.

(2) Graywater information, including the vessel's ability to store graywater while in California waters and size and capacity of any graywater holding tanks, as measured in metric tons.

(3) Blackwater information, including the vessel's ability to store blackwater while in California waters and size and capacity of any blackwater holding tanks, as measured in metric tons.

(4) Marine sanitation devices information, including number, size, and nature of devices on the vessel treating sewage prior to discharge.

(5) Connections to ensure transfer of sewage and graywater to pumpout facilities.

(6) California port of call information, including expected number of calls, in days, in ports within the state during 2006.

(7) Certification of accurate information, including the printed name, title, and signature of the master, owner, operator, or person in charge, or responsible officer attesting to the accuracy of the information provided.

(c) The commission shall submit the reported information to the board on or before February 1, 2007. The board shall submit the reported information to the Legislature on or before October 1, 2007. The board may submit the report to the Legislature in an electronic form.

(Added by Stats.2005, c. 588 (S.B.771), § 18.)

## Chapter 4. Penalties

**§ 72430. Civil penalties for violations; determination of amount of penalty; court considerations; judicial enforcement of section by Attorney General**

(a) A person who violates Section 72420 or 72420.2, or until January 1, 2010, Section 72420.1, is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature,

circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d)(1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2004, c. 764 (A.B.2672), § 6; Stats.2005, c. 588 (S.B.771), § 19.)

## Chapter 5. Miscellaneous

### § 72440. Determination of necessity of application to federal government for prohibition of certain releases from large passenger vessels and oceangoing ships into marine waters

(a)(1) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage or sewage sludge from large passenger vessels, sewage from oceangoing ships with sufficient holding tank capacity, and sewage sludge from oceangoing ships, into the marine waters of the state or to prohibit the release of sewage sludge from large passenger vessels and oceangoing ships into marine sanctuaries, as described in Section 72420 and subdivision (a) of Section 72420.1. If the board determines that application is necessary for either sewage or sewage sludge, or both, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage or sewage sludge, or both, as necessary, from large passenger vessels, sewage from oceangoing ships with sufficient holding tank capacity, and sewage sludge from oceangoing ships, into the marine waters of the state and, if necessary, to authorize the state to prohibit the release of sewage sludge from large passenger vessels and oceangoing ships into marine sanctuaries.

(2) It is not the Legislature's intent to establish for the marine waters of the state a no discharge zone for sewage from all vessels, but only for a class of vessels.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels and oceangoing ships, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date..

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2004, c. 764 (A.B.2672), § 8; Stats.2005, c. 588 (S.B.771), § 21; Stats.2006, c. 292 (S.B.497), § 10.)

**§ 72440. Determination of necessity of application to federal government for state to prohibit release of sewage sludge or oily bilgewater from passenger vessels into marine waters**

*Text of section operative January 1, 2010*

(a) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state or marine sanctuaries. If the board determines that application is necessary, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state and marine sanctuaries.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(c) This section shall become operative on January 1, 2010.

(Added by Stats.2004, c. 764 (A.B.2672), § 9, operative Jan. 1, 2010.)

**§ 72440.1. Request for federal prohibition of waste releases in certain waters**

The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of waste by large passenger vessels or oceangoing ships in all of the waters in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary; and, request, if necessary, approval of the state's prohibition of the release of waste in the marine sanctuaries.

(Added by Stats.2005, c. 588 (S.B.771), § 22.)

**§ 72441. Application of division**

(a) This division does not apply to either of the following:

(1) A large passenger vessel or oceangoing ship that operates in the marine waters of the state solely in innocent passage.

(2) Discharges made for the purpose of securing the safety of the large passenger vessel or oceangoing ship or saving life at sea, if reasonable precautions are taken for the purpose of preventing or minimizing the discharge.

(b) For the purposes of this section, a vessel is engaged in innocent passage if its operation in state waters would constitute innocent passage under either the Convention on the Territorial Sea and Contiguous Zone, dated April 29, 1958, or the United Nations Convention on the Law of the Sea, dated December 10, 1982.

(Added by Stats.2003, c. 488 (A.B.121), § 1. Amended by Stats.2005, c. 588 (S.B.771), § 23.)

## DIVISION 4.
## Chapter 1. Railroad Corporations
## Article 10. Railroad Safety and Emergency Planning and Response

### § 7718. Railroad Accident Prevention and Immediate Deployment Force; creation; purpose; members; plan

(a) The Railroad Accident Prevention and Immediate Deployment Force is hereby created in the California Environmental Protection Agency. The force shall be responsible for providing immediate onsite response capability in the event of large-scale releases of toxic materials resulting from surface transportation accidents and for implementing the state hazardous materials incident prevention and immediate deployment plan. This force shall act cooperatively and in concert with existing local emergency response units. The force shall consist of representatives of all of the following:

(1) Department of Fish and Game.
(2) California Environmental Protection Agency.
(3) State Air Resources Board.
(4) California Integrated Waste Management Board.
(5) California regional water quality control boards.
(6) Department of Toxic Substances Control.
(7) Department of Pesticide Regulation.
(8) Office of Environmental Health Hazard Assessment.
(9) State Department of Health Services.
(10) Department of the California Highway Patrol.
(11) Department of Food and Agriculture.
(12) Department of Forestry and Fire Protection.
(13) Department of Parks and Recreation.
(14) Department of Boating and Waterways.
(15) California Public Utilities Commission.
(16) Any other potentially affected state, local, or federal agency.
(17) Office of Emergency Services.

(b) The California Environmental Protection Agency shall develop a state railroad accident prevention and immediate deployment plan in cooperation with the State Fire Marshal, affected businesses, and all of the entities listed in paragraphs (1) to (17), inclusive, of subdivision (a).

(c) The plan specified in subdivision (b) shall be a comprehensive set of policies and directions that every potentially affected state agency and business shall follow if there is a railroad accident to minimize the potential damage to the public health and safety, property, and environment that might result from accidents involving railroad activities in the state.

(Added by Stats.1991, c. 766 (S.B.48), § 7.)

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## DIVISION 2.
## PART 24. Oil Spill Response, Prevention and Administration Fees
## Chapter 1. General Provisions and Definitions

**§ 46001. Short title**

This part shall be known and may be cited as the Oil Spill Response, Prevention, and Administration Fees Law.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46002. Definitions; collection and administration of fees**

The collection and administration of the fees referred to in Sections 46051 and 46052 shall be governed by the definitions contained in Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code, unless expressly otherwise provided by the definitions contained in this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46003. Definitions; construction of part**

Except where the context otherwise requires, the definitions contained in this chapter govern the construction of this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46004. Construction of provisions**

The provisions of this part, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46005. Actions or proceedings commenced before effective date of part**

Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedures taken shall conform to the provisions on this part as far as possible.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46006. Administrator**

"Administrator" means the chief deputy director of the Department of Fish and Game appointed by the Governor pursuant to Section 8670.4 of the Government Code.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46007. Barges**

"Barges" means any relatively flat-bottomed, waterborne vessel which is propelled by being pulled or pushed by another vessel, and is constructed or adapted to carry crude oil or petroleum products in commercial quantities as cargo.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46008. Barrel**

"Barrel" means 42 gallons of crude oil or petroleum products.

(Added by Stats.1991, c. 300 (A.B.1409) § 6, eff. Aug. 1, 1991.)

**§ 46009. Board**

"Board" means the State Board of Equalization.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46010. Crude oil**

"Crude oil" means petroleum in an unrefined or natural state, including condensate and natural gasoline.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46011. Discharge**

"Discharge" means any release of at least one barrel of oil into marine waters which is not authorized by any federal, state, or local government entity.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46012. Designated amount**

"Designated amount" means an amount equal to one hundred nine million seven hundred fifty thousand dollars ($109,750,000), subject to the following:

(a) Fifty-four million eight hundred seventy-five thousand dollars ($54,875,000) shall be retained in the Oil Spill Response Trust Fund as cash.

(b) Fifty-four million eight hundred seventy-five dollars ($54,875,000) shall be accessible in the Oil Spill Response Trust Fund in the form of financial security obtained by the Treasurer.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1993, c. 1190 (S.B.171), § 8, eff. Oct. 11, 1993; Stats.1995, c. 940 (A.B.1549), § 8; Stats.1996, c. 362 (A.B.748), § 14.)

**§ 46013. Feepayer**

"Feepayer" means any person who may be liable for the payment of a fee imposed by either Section 8670.40 or 8670.48 of the Government Code.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46014. Independent crude oil producer**

"Independent crude oil producer" means any person or entity producing crude oil within this state who does not refine crude oil into product, and who does not own or operate any retail gasoline marketing facilities.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46015. Local government**

"Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46016. Marine facility**

"Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting crude oil or petroleum products and is located in marine waters, or is located where a discharge could impact marine waters unless the facility, (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or, (2) is placed on a farm, nursery, logging site, small craft refueling dock as defined in Section 8670.3 of the Government Code, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this part, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility."

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1991, c. 1115 (S.B.977), § 3; Stats.2004, c. 796 (S.B.1742), § 43.)

**§ 46017. Marine terminal**

"Marine terminal" means any marine facility used for transferring crude oil or petroleum products to or from tankers or barges. For the purposes of this part, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46018. Marine waters**

"Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2004, c. 796 (S.B.1742), § 44.)

**§ 46019. Operator**

(a) "Operator" means any of the following:

(1) Any person who owns, operates, charters by demise, or leases a vessel.

(2) Any person who owns or operates a marine facility.

(3) Any person who owns or operates a marine pipeline.

(4) Any person who owns or operates a refinery.

(b) "Operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility. Also, "operator" does not include any person who owns the land beneath a marine facility or the facility itself if the person is not involved in the operation of the facility.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46020. Person**

"Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1994, c. 1200 (S.B.469), § 76, eff. Sept. 30, 1994.)

**§ 46021. Petroleum products**

"Petroleum products" means any liquid hydrocarbon at atmospheric temperature and pressure that is the product of the fractionation, distillation, or other refining or processing of crude oil and that is used as, useable as, or may be refined as, a fuel or fuel blendstock, including, but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and alcohol fuels containing petroleum products.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46022. Pipeline**

"Pipeline" means any pipeline used at any time to transport crude oil or petroleum products.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46023. Refinery**

"Refinery" means a facility or location which refines crude oil, including condensate and natural gasoline, into petroleum products, lubricating oils, coke, or asphalt.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46024. Responsible party; party responsible**

"Responsible party" or "party responsible" means any of the following:

(a) The owner or transporter of crude oil or petroleum products or a person or entity accepting responsibility for the crude oil or petroleum products.

(b) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46025. Spill**

"Spill" means any release of at least one barrel of crude oil or petroleum products into marine waters which is not authorized by any federal, state, or local government entity.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46026. State Interagency Oil Spill Committee**

"State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46027. State oil spill contingency plan**

"State 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 of Division 1 of Title 2 of the Government Code.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2004, c. 796 (S.B.1742), § 45.)

**§ 46028. Tanker**

"Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of crude oil or petroleum products in bulk or in commercial quantities as cargo.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46029. Vessel**

"Vessel" means a tanker or barge as defined in this chapter.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Chapter 2. Oil Spill Prevention and Administration Fee and Oil Spill Response Fee
## Article 1. Imposition of Fee

**§ 46051. Oil spill prevention and administration fee**

The fee imposed pursuant to Section 8670.40 of the Government Code shall be administered and collected by the board in accordance with this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46052. Oil spill response fee**

The fee imposed pursuant to Section 8670.48 of the Government Code shall be administered and collected by the board in accordance with this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46053. Unremitted fees collected pursuant to § 46051 or § 46052**

Any fees collected from an owner of crude oil or petroleum products pursuant to Section 46051 or 46052 which have not been remitted to the board shall be deemed a debt owed to the State of California by the person required to collect and remit fees.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46054. Notification of feepayers**

(a) * * *<u>T</u>he board shall notify the feepayers that, as of the first of the month following the notification, <u>no</u> fee * * * <u>shall</u> be imposed * * * <u>whenever the administrator, in consultation with the board, and with the approval of the Treasurer, determines that the amount in the Oil Spill Response Trust Fund, collected pursuant to Section 46052, is equal to the amount specified in subdivision (a) of Section 46012, and the collection of the fee is not required for any of the following purposes:</u>

<u>(1) The purposes specified in subdivision (k) of Section 8670.48 of the Government Code.</u>

<u>(2) To repay any draw on a financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48 of the Government Code, including any principal, interest, premium, fees, charges, or costs of any kind incurred in connection with that financial security.</u>

<u>(3) To repay any borrowing by</u> the Treasurer * * * pursuant to Article 7.5 (commencing with Section 8670.53.1) of Chapter 7.4 of Division 1 of Title 2 of the Government Code, * * * <u>including any</u> principal, interest, premium, fees, charges, or costs of any kind <u>incurred</u> in connection with * * * <u>that borrowing</u>.

(b) Whenever the fee has ceased to be imposed in accordance with subdivision (a)<u>,</u> the administrator <u>may direct the board to resume collection of the fee, if the administrator</u>, in consultation with the board, * * * <u>pursuant to paragraph (1) of subdivision (f) of Section 8670.48 of the Government Code, makes one of the following determinations:</u>

(1) The amount in the Oil Spill Response Trust Fund is less than or equal to 95 percent of the amount specified in subdivision (a) of Section 46012* * *.

(2) Additional money is required for the purposes specified in subdivision (k) of Section 8670.48 of the Government Code.

(3) That revenue is necessary to repay any draw on a financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48 of the Government Code or any borrowing by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1) of the Government Code, including any principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings or that financial security.

(c) If the administrator directs the board to resume collection of the fee, the board shall notify the feepayers* * *, upon the first of the month following the notification, that the fee will be imposed.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended Stats.1192, c. 1312 (A.B.2912), § 12; Stats.1992, c. 1314 (S.B.2025), § 10; Stats.1993, c. 1190 (S.B.171), § 9; Stats.2007, c. 373 (A.B.1220), § 19, eff. Oct. 10, 2007.)

## Article 2. Registration

### § 46101. Persons required to register

Every person who operates an oil refinery in this state, a marine terminal in marine waters, or operates a pipeline across, under, or through marine waters or any pipeline to transport crude oil out of the state shall register with the board.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1992, c. 1313 (A.B.3173), § 14, eff. Sept. 30, 1992.)

## Chapter 3. Determinations
## Article 1. Returns and Payments

### § 46151. Monthly return and payment of fees; annual information return

(a) The fees collected and administered under Sections 46051 and 46052 are due and payable to the board monthly on or before the 25th day of the calendar month following the monthly period for which the fee is due. Each feepayer, on or before the 25th day of the month following each monthly period, shall make out a return in the form as prescribed by the board, which may include, but not be limited to, electronic media for the preceding monthly period, in the form as prescribed by the board, showing the information required to be reported by Sections 8670.40 and 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, if any, to the office of the board on or before the 25th day of the month following the monthly period for which the fee is due.

(c) In addition to the returns due pursuant to subdivision (a), each feepayer shall provide an annual information return, in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information required to be reported by Section 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. The feepayer shall deliver the return containing the required information for the preceding calendar

year to the office of the board on or before February 1st of each year. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2002, c. 459 (A.B.1936), § 30.)

**§ 46152. Alternate periods for returns and payments**

The board, if it determines it necessary in order to facilitate the administration of this part, may require returns and payments specified under Section 46151 to be made for periods other than monthly.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46153. Extension of time for return and payment; interest**

(a) The board, for good cause, may extend, for a period not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time if a request for the extension is filed with the board within or prior to the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1993, c. 589 (A.B.2211), § 175.)

**§ 46154. Failure to make timely payment; failure to make timely return; penalty**

(a) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 46201) or Article 3 (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(b) Any feepayer who fails to file a return in accordance with the due date set forth in subdivision (a) of Section 46151 or the due date established by the board in accordance with Section 46152, shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2000, c. 923 (A.B.2894), § 54.)

**§46154.1. Failure to file information return; penalty**

If the information return pursuant to subdivision (c) of Section 46151 is not filed within the time prescribed, a penalty of five hundred dollars ($500) shall be assessed.

(Added by Stats.2000, c. 923 (A.B.2894), § 54.5.)

**§ 46156. Failure to make timely return and payment due to reasonable cause; relief from penalty**

(a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46154.1, 46160, 46251, and 46356.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2000, c. 923 (A.B.2894), § 56; Stats.2000, c. 1052 (A.B.2898), § 72.5; Stats.2004, c. 527 (S.B.1881), § 9.)

**§ 46157. Failure to make timely return and payment due to disaster; relief from interest**

(a) If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 46153, 46154, 46160, and 46253.

(b) Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2000, c. 923 (A.B.2894), § 57.)

**§ 46157.5. Relief from interest; unreasonable error or delay by board**

(a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during fee periods commencing on or after January 1, 2000..

(Added by Stats.1999, c. 929 (A.B.1638), § 59. Amended by Stats.2001, c. 251 (A.B.1123), § 33.)

**§ 46158. Failure to make timely report or payment due to reliance on written advice from board; relief from fees, penalty or interest; conditions**

(a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(C) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 2. Deficiency Determinations

### § 46201. Computation of fee by board; discontinued businesses; offset payments; interest and penalties

(a) If the board is dissatisfied with the return filed or the amount of fee paid to the state by any feepayer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more deficiency determinations may be made of the amount of fee due for one or for more than one period. When a business is discontinued, a determination may be made at any time thereafter, within the period specified in Section 46204, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part. In making a determination the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) The amount of fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment.

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted pursuant thereto, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

(d) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or regulations adopted pursuant thereto, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46202. Notice of board determination

The board shall give to the feepayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the feepayer at his or her address as it appears in

the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46203. Limitation of time in which notice can be given**

Except in the case of fraud, intent to evade this part or regulations adopted pursuant thereto, or failure to make a return, every notice of deficiency determination shall be given within three years after the 25th day of the month following the period for which the return was due or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46204. Decedents' estates; notice of deficiency determination**

In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the fee or any portion thereof.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46205. Extension of notice period**

If before the expiration of the time prescribed in Section 46203 for the mailing of a notice of deficiency determination the feepayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 3. Determinations If No Return Made

**§ 46251. Estimate of fee by board; penalty; discontinued businesses**

If any feepayer fails to make a return, the board shall make an estimate of the amount of fee to be paid. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate, the board shall compute and determine the amount of fee or other amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or more than one period. When a business is discontinued, a determination may be made at any time thereafter, within the periods specified in Section 46203, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46252. Offsets**

In making a determination, the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46253. Interest**

The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from date the amount of the fee, or any portion thereof, became due and payable until the date of payment.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46254. Penalty**

If the failure of any person to file a return is due to fraud or an intent to evade this part or regulations adopted pursuant thereto, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 46251.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46255. Notice of estimate, determination and penalty**

Promptly after making its determination, the board shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 4. Jeopardy Determinations

**§ 46301. Collection jeopardized by delay; failure to pay fee**

If the board believes that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 46154 shall attach to the amount of fee specified therein.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2004, c. 527 (S.B.1881), § 10.)

**§ 46302. Petition for redetermination; security deposit**

The feepayer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 5 (commencing with Section 46351), with the board within 10 days after the service upon the feepayer of notice of the determination, but he or she shall, within the 10-day period, deposit with the board such security as it determines to be necessary to ensure compliance with this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who

deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 46202. Upon any such sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46303. Administrative hearing; purposes; filing of application**

(a) In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(1) To establish that the determination is excessive.

(2) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(b) The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 46302, such security as the board may determine to be necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except the sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect the provisions of Section 46301 relating to the finality date of the determination or to penalty or interest.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 5. Redeterminations

**§ 46351. Petition for redetermination; effect of failure to file petition**

Any person from whom an amount is determined to be due under Article 2 (commencing with Section 46201) or Article 3 (commencing with Section 46251), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46352. Form of petition**

Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46353. Reconsideration; hearing**

If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and, if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46354. Change of amount of determination; claims for increase**

The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by subdivision (d) of Section 46201 or Section 46254 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the amount of fee for the period for which the increase is asserted was due.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46355. Final order or determination**

The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46356. Amounts due and payable when final; penalties**

All amounts determined to be due by the board under Article 2 (commencing with Section 46201) or Article 3 (commencing with Section 46251) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991**.)**

**§ 46357. Service of Notice**

Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 46202.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Chapter 4. Collection of Fee
## Article 1. Security for Fee

**§ 46401. Required security; form and amount; disposition of security; notice**

(a) The board, whenever it determines it to be necessary to ensure compliance with this part, may require any person subject to this part to place with it such security as the board may determine to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

(b) If service is made by mail, service shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46402. Tax lien; delinquent or unpaid obligations; notice to creditors or holders of feepayer's property**

If any feepayer is delinquent in the payment of any obligations imposed by this part, or in the event a determination has been made against the feepayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the feepayer, or owing any debts to the feepayer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46403. Transfer of assets following notice of lien**

After receiving the notice, the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires first.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46404. Feepayer's property held by others; notice to board; notice to bank holding assets of feepayer**

All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried at which the credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46405. Transfer or disposition of assets subject to withholding; liability**

If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness

due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46406. Levy of feepayer's assets held by another; transmission; notice to financial institution; continued withholding**

(a) The board may, by notice of levy served personally or by first- class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or penalties due from that feepayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1993, c. 1113 (S.B.704), § 24; Stats.1998, c. 609 (S.B.2232), § 43; Stats.1999, c. 991 (S.B.45), § 69, operative July 1, 2001.)

## Article 2. Suit for Fee

### § 46411. Legal actions authorized

The board may bring any legal actions as are necessary to collect any deficiency in the fee required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46412. Evidence of fee; writ of attachment

In any suit brought to enforce the rights of the state with respect to fees, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the fee, of the delinquency of the amount of fee, interest, and penalty set forth therein, and of compliance by the board with all provisions of this part in relation to the computation and levy of the fee. In the action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 3. Judgment for Fee

### § 46421. Failure to pay amount when due and payable; liens

(a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable lien. The lien shall be subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 46301 pertaining to jeopardy assessments, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46422. Release of property subject to lien; subordination of lien

(a) If the board determines that the amount of fee, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 4. Warrant for Collection

### § 46431. Issuance of warrant; levy and sale

At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or the last recording or filing of a notice of lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1996, c. 872 (A.B.3472), § 167.)

### § 46432. Service fees

The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for their services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1996, c. 872 (A.B.3472), § 168.)

### § 46433. Collection of fees

The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the fee.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 5. Seizure and Sale

### § 46441. Seizure and sale authorized

Whenever any feepayer is delinquent in the payment of the fee, the board or its authorized representative may seize any property, real or personal, of the feepayer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46442. Notice of sale

(a) Notice of the sale, and the time and place thereof, shall be given to the delinquent feepayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the feepayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and deposited in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part hereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(1) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(2) One conspicuous place on the property.

(b) The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the feepayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2006, c. 538 (S.B.1852), § 635.)

**§ 46443. Sale; bill of sale or deed; unsold property**

At the sale, the property shall be sold by the board, or by its authorized agent, in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution. The unsold portion of any property seized may be left at the place of sale at the risk of the feepayer.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46444. Proceeds from sale**

If, upon the sale, the moneys received exceed the amount of all fees, penalties, and costs due the state from the feepayer, the board shall return the excess to him or her and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the feepayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the feepayer, his or her heirs, successors, or assigns.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1996, c. 860 (A.B.2260), § 21.)

## Article 6. Successor Withholding and Liability

**§ 46451. Sale or cessation of business; withholding from purchase price**

If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successor or assigns shall withhold from the purchase price an amount sufficient to cover that amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46452. Failure to withhold from purchase price; liability of successor**

(a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price valued in money.

(b)(1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the board of the amount that is required to be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:
(A) the date the board receives a written request from the purchaser for a certificate.
(B) The date of the sale of the business or stock of goods.
(C) The date the former owner's records are made available for audit.
(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold from the purchase price under this article. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46453. Issuance of certificate**

The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46454. Notice of successor liability; petition for reconsideration; amount due and payable**

The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 46351) of Chapter 3. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 7. Miscellaneous

**§ 46461. Cumulative remedies**

The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46462. Priority of lien**

(a) The amounts required to be paid by any person under this part, together with interest and penalties, shall be satisfied first in any of the following cases:
(1) Whenever the person is insolvent.
(2) Whenever the person makes a voluntary assignment of his or her assets.
(3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
(4) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

(b) This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

(c) The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46463. Judgments against partnership; use of partner assets; exception**

The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

(Added by Stats.1996, c. 1003 (A.B.583), § 14.)

**§ 46464. Written installment payment agreements**

(a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination become final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 46356.

(Added by Stats.1999, c. 929 (A.B.1638), § 60. Amended by Stats.2000, c. 1052 (A.B.2898), § 75.)

**§ 46464.5. Annual statement to taxpayers with installment payment agreements**

The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 46464 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

(Added by Stats.2000, c. 1052 (A.B.2898), § 76.)

## Chapter 5. Overpayments and Refunds
## Article 1. Claim for Refund

**§ 46501. Overpayment; credits or refunds**

(a) If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1995, c. 555 (S.B.718), § 63.)

**§ 46501.5. Amount represented as reimbursement for fees; computed upon amounts not subject to fee or in excess of fee amount; return to customer; failure or refusal to make return**

When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

(Added by Stats.1996, c. 1087 (S.B.1827), § 61.)

**§ 46502. Limitation of refund period**

(a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251) or Article 4 (commencing with Section 46301) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 46205.

(b) A refund may be approved by the board for any period for which a waiver is given pursuant to Section 46205 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) If the board has made a determination under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), or Article 4 (commencing with Section 46301) of Chapter 3, and if a person's claim for refund was filed timely within the applicable six-month period specified by

subdivision (a) or (b), that claim for refund shall be deemed to also apply to that person's later payments in full or partial satisfaction of that determination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2001, c. 543 (S.B.1185), § 48.)

**§ 46503. Claim requirements**

Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46504. Failure to file timely claim**

Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46505. Notice of disallowed claim**

Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant, the service to be made as provided by Section 46202.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46506. Interest on overpayment of fees**

Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1992, c. 1336 (S.B.1607), § 15; Stats.1997, c. 620 (S.B.1102), § 15.)

**§ 46507. Interest; disallowance on careless or intentional overpayment, or request for deferral of action on refund claim**

(a) If the board determines that any overpayment has been made intentionally or by reasons of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1998, c. 420 (S.B.2230), § 12.)

## Article 2. Suit for Refund

**§ 46521. Equitable relief**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any fee sought to be collected.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46522. Conditions precedent to suit or proceeding**

No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46523. Limitation of claim period**

Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46524. Failure of board to file notice within specified time; claims**

If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46525. Failure to bring suit within specified time**

Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46526. Judgment; disposition of judgment amount**

If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any fees due from the plaintiff, and the balance shall be refunded to the plaintiff.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46527. Interest on judgment**

In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to date

preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46528. Action brought by assignee of feepayer**

A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the feepayer paying the fee or by any person other than the person who has paid the fee.

As used in this section, "assignee" does not include a person who has acquired the business of the feepayer which gave rise to the fees and who is thereby a successor in interest to the feepayer.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 3. Recovery of Erroneous Refunds

**§ 46541. Actions to recover erroneous refunds**

(a) The Controller may recover any refund or part thereof that which is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 46201) or Article 4 (commencing with Section 46301) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stat.1998, c. 609 (S.B.2232), § 44.)

**§ 46542. Change of venue**

In any action brought pursuant to subdivision (a) of Section 46541, the court may, with the consent of the Attorney General, order a change in the place of trial.

(Added by Stats.1998, c. 609 (S.B.2232), § 45.)

**§ 46543. Prosecution of action; applicable law**

The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 46541, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

(Added by Stats.1998, c. 609 (S.B.2232), § 46.)

**§ 46544. Relief from interest; erroneous refunds**

(a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 46541, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 46541 on or after January 1, 2000.

(Added by Stats.1999, c. 929 (A.B.1638), § 61.)

### Article 4. Cancellations

**§ 46551. Illegally determined amounts; cancellations**

(a) If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1995, c. 555 (S.B.718), § 64.)

## Chapter 6. Administration
### Article 1. General Provisions

**§ 46601. Enforcement of oil spill response, prevention and administrative fee provisions**

The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46602. Records**

Every feepayer shall keep such records, receipts, invoices, and other pertinent papers in such form as the board may require.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46603. Examination of books and records**

The board may make such examinations of the books and records of any feepayer as it may determine to be necessary in carrying out this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46604. Board employees**

The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

**§ 46605. Service of notice; certificate by board as evidence**

A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice

provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Article 2. The California Taxpayers' Bill of Rights

### § 46614. Oil Spill Response, Prevention, and Administration Fee Law; proposed changes; hearing

The board shall conduct an annual hearing before the full board where industry representatives and individual feepayers are allowed to present their proposals on changes to the Oil Spill Response, Prevention, and Administration Fee Law that may further improve voluntary compliance and the relationship between feepayers and government.

(Added by Stats.1995, c. 497 (S.B.722), § 33.)

## Chapter 7. Disposition of Proceeds

### § 46651. Payments; form; deposits

All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Sections 46051 and 46052 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Oil Spill Prevention and Administration Fund or the Oil Spill Response Trust Fund.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46652. Refunds

The money in the Oil Spill Prevention and Administration Fund and the Oil Spill Response Trust Fund shall, upon order of the Controller be drawn therefrom for refunds under this part.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46653. Refund of excess money in funds

(a) Except as provided in subdivision (c), the administrator shall direct the board to provide refunds of the excess money whenever the administrator makes both of the following determinations:

* * * (1) The administrator determines, pursuant to subdivision (i) of Section 8670.48 of the Government Code, that the total amount in the Oil Spill Response Trust Fund, collected pursuant to Section 46052, exceeds the total of the amount specified in subdivision (a) of Section 46012* * *.

(2) The administrator * * * determines additional collection is not necessary to provide for the purposes specified in paragraphs (1) to (6), inclusive, and paragraph (8), of subdivision (k) of Section 8670.48 of the Government Code * * * or to repay any draw upon the financial security obtained by the Treasurer * * * pursuant to subdivision (o) of Section 8670.48 of the Government Code or money borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1) of Chapter 7.4 of Division 1 of Title 2 of the Government Code, including principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings * * * or that financial security.

(b) The board, as directed by the administrator pursuant to subdivision (a), shall refund the excess money in that fund to each person who paid the fee to the state in proportion to the amount that person paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the amount specified in subdivision (a) of Section 46012.

(c) If the amount of money in the fund exceeds the amount specified in this section by 10 percent or less, * * * the administrator is not required to order refunds pursuant to this section.

(d) Nothing in this section shall require the refund of excess fees more frequently than once each year.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1993, c. 1190 (S.B.171), § 10; Stats.2007, c. 373 (A.B.1220), § 20, eff. Oct. 10, 2007.)

## Chapter 8. Violations

### § 46701. Refusal to furnish returns or data; penalty

Any person who refuses to furnish any return required to be made or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine in an amount not to exceed five hundred dollars ($500) for each offense in the discretion of the court, together with costs of investigation and prosecution.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46702. False returns or records; refusal to permit inspections; penalty

Any person who knowingly or willfully files a false return with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep records as prescribed by the board, or who fails to preserve those records for the inspection of the board for such time as the board determines to be necessary, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both that fine and imprisonment in the discretion of the court, together with costs of investigation and prosecution.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46703. Evasion of payment; penalty

Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46704. Violations not specifically provided for in part; penalty

Every person convicted for a violation of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment in the discretion of the court, together with costs of investigation and prosecution.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

### § 46705. Felony violations not specifically provided for in part; penalty

Every person convicted of a felony for a violation of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars

($5,000), by imprisonment in the state prison, or by both that fine and imprisonment in the discretion of the court, together with the cost of investigation and prosecution.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.2006, c. 347 (A.B.2367), § 21.)

**§ 46706. Limitation of actions**

Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991.)

## Chapter 9. Disclosure of Information

**§ 46751. Confidential information; access to information by Department of Fish and Game; Public access**

(a) The board shall provide any and all information obtained under this part to the Department of Fish and Game.

(b) The Department of Fish and Game and the board may utilize any information obtained pursuant to this part to develop data on oil spill prevention, abatement, and removal within the state. Notwithstanding any other provision of this section, the Department of Fish and Game may make oil spill prevention, abatement, and removal public.

(c) It shall be unlawful for the board, or any person having an administrative duty under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code or Division 7.8 (commencing with Section 8750) of the Public Resources Code to make known, in any manner whatever, the business affairs, operations, or any other information pertaining to a fee payer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by subdivision (a), subdivision (d), and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to crude oil and petroleum products any crude oil and petroleum products information in the possession of the board that is deemed necessary for the enforcement of those laws.

(e) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

(f) Nothing in this section shall be construed as limiting or increasing the public's access to information on any aspect of oil spill prevention, abatement, and removal collected pursuant to other state or local law, regulations, or ordinances.

(Added by Stats.1991, c. 300 (A.B.1409), § 6, eff. Aug. 1, 1991. Amended by Stats.1997, c. 620 (S.B.1120), § 16.)

## DIVISION 7.
## Chapter 4. Regional Water Quality Control
## Article 4. Waste Discharge Requirements

### § 13271. Discharge of hazardous substance or sewage; notice requirement; violation; regulations establishing reportable quantities

(a)(1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (A) that person has knowledge of the discharge, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board, the local health officer* * *, and the director of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to * * * this section, the local health officer and * * * the director of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and * * * the director of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment in a county jail for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to groundwater or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f)(1) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to groundwater or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, "sewage" means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(2) A collection system owner or operator, as defined in paragraph (1) of subdivision (a) of Section 13193, in addition to the reporting requirements set forth in this section, shall submit a report pursuant to subdivision (c) of Section 13193.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

(h) For the purposes of this section, the reportable quantity for perchlorate shall be 10 pounds or more by discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted pursuant to subdivision (e).

(i) Notification under this section does not nullify a person's responsibility to notify the local health officer or the director of environmental health pursuant to Section 5411.5 of the Health and Safety Code.

(Added by Stats.1980, c. 877, p. 2753, § 2. Amended by Stats.1986, c. 1479, § 1; Gov.Reorg.Plan No. 1 of 1991, § 195, eff. July 17, 1991; Stats.1994, c. 1214 (A.B.3404), § 9; Stats.1997, c. 783 (S.B.105), § 1; Stats.1997, c. 833 (A.B.541), § 1.5; Stats.2001, c. 498 (A.B.285), § 5; Stats.2003, c. 614 (S.B.1004), § 1; Stats.2007, c. 371 (A.B.800), § 1.)

**§ 13272. Discharge of oil or petroleum product; notice requirement; violation; reportable quantity**

(a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the California oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code. This section shall not apply to spills of oil into marine waters as defined in subdivision (f) of Section 8670.3 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each day of failure to notify, or imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification to the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(f) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted.

(Added by Stats.1982, c. 1480, p. 5691, § 1. Amended by Stats.1990, c. 1248 (S.B.2040), § 20, eff. Sept. 24, 1990; Stats.1994, c. 1214 (A.B.3404), § 10; Stats.2004, c. 796 (S.B.1742), § 46.)

## Chapter 5. Enforcement and Implementation
## Article 5. Civil Monetary Remedies

### § 13350. Civil liabilities; recovery of amount; contribution; annual report

(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b)(1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term "discharge" does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed fifteen thousand dollars ($15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed twenty dollars ($20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars ($5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars ($500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars ($10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining that amount, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for that liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other provision of law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(Added by Stats.1969, c. 482, p. 1070, § 18, operative Jan. 1, 1970. Amended by Stats.1971, c. 668, p. 1322, § 1; Stats.1980, c. 877, p. 2754, § 3; Stats.1984, c. 1541, § 5; Stats.1989, c. 1445, § 2; Stats.1999, c. 686 (S.B.390), § 3; Stats.2001, c. 869 (A.B.1664), § 5: Stats.2003, c. 683 (A.B.897), § 4.)

**§ 13351. Determination of amount of civil liability; factors considered**

In determining the amount of civil liability to be imposed pursuant to this chapter, the superior court shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability,

economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

(Added by Stats.1984, c. 1541, § 6. Amended by Stats .2001, c. 869 (A.B.1664), § 6.)

## Chapter 5.5. Compliance With The Provisions of The Federal Water Pollution Control Act as Amended in 1972

### § 13375. Radiological, chemical or biological warfare agents; discharge prohibited

The discharge of any radiological, chemical, or biological warfare agent into the waters of the state is hereby prohibited.

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972.)

### § 13376. Discharging pollutants or dredged or fill material or operating treatment works; reports of discharges or proposed discharges; prohibited discharges; exceptions

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended. (33 U.S.C.A. § 1251 et seq.) Any person proposing to discharge pollutants or dredged or fill material or proposing to operate a publicly owned treatment works or other treatment works treating domestic sewage shall file a report at least 180 days in advance of the date on which it is desired to commence the discharge of pollutants or dredged or fill material or the operation of the treatment works. Any person who owns or operates a publicly owned treatment works or other treatment works treating domestic sewage, which treatment works commenced operation before January 1, 1988, and does not discharge to navigable waters of the United States, shall file a report within 45 days of a written request by a regional board or the state board, or within 45 days after the state has an approved permit program for the use and disposal of sewage sludge, whichever occurs earlier. The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited, except that no waste discharge requirements or permit is required under this chapter if no state or federal permit is required under the Federal Water Pollution Control Act, as amended.

(Added by Stats.1987, c. 1189, § 6.)

### § 13385. Violations; civil liability; applicability; compliance projects; annual report

*Text of section operative until July 1, 2007*

*(Water Code § 13385.3 makes subd (k) as amended by Stats.2006, c. 404 operative on July 1, 2007)*

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), * * * "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f)(1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2)(A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D)(i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, "wastewater treatment unit" means a component of a wastewater treatment plant that performs a designated treatment function.

(2)(A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or * * * 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in <u>subclause (III) of clause (iv) of</u> subparagraph (B) * * *. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "<u>a publicly owned treatment works serving a</u> small community" means a publicly owned treatment works serving a population of 10,000 persons or <u>fewer</u> or

a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars ($15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars ($15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars ($15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n)(1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2)(A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001-02 Regular Session apply only to violations that occur on or after January 1, 2003.

(Added by Stats.1987, c. 1189, § 10. Amended by Stats.1999, c. 92 (A.B.1104), § 6; Stats.1999, c. 93 (S.B.709), § 6; Stats.2000, c. 807 (S.B.2165), § 2; Stats.2001, c. 869 (A.B.1664), § 7; Stats.2002, c. 995 (A.B.2351), § 1; Stats.2002, c. 1019 (A.B.1969), § 2, eff. Sept. 28, 2002; Stats.2002, c. 1019 (A.B.1969), § 3, eff. Sept. 28, 2002, operative Jan. 1, 2003; Stats.2003, c. 683 (A.B.897), § 7; Stats.2004, c. 644 (A.B.2701), § 41; Stats.2006, c. 404 (S.B.1733), § 3; Stats.2007, c. 130 (A.B.299), § 239.)

**§ 13385 Violations; civil liability; applicability; compliance projects; annual report**

*Text of section operative July 1, 2007*

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), * * * "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f)(1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2)(A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D)(i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, "wastewater treatment unit" means a component of a wastewater treatment plant that performs a designated treatment function.

(2)(A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or * * * 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in <u>subclause (III) of clause (iv) of</u> subparagraph (B)* * *. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state

board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars ($15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars ($15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars ($15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) T his subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n)(1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2)(A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001-02 Regular Session apply only to violations that occur on or after January 1, 2003.

(Added by Stats.1987, c. 1189, § 10. Amended by Stats.1999, c. 92 (A.B.1104), § 6; Stats.1999, c. 93 (S.B.709), § 6; Stats.2000, c. 807 (S.B.2165), § 2; Stats.2001, c. 869 (A.B.1664), § 7; Stats.2002, c. 995 (A.B.2351), § 1; Stats.2002, c. 1019 (A.B.1969), § 2, eff. Sept. 28, 2002; Stats.2002, c. 1019 (A.B.1969), § 3, eff. Sept. 28, 2002, operative Jan. 1, 2003; Stats.2003, c. 683 (A.B.897), § 7; Stats.2004, c. 644 (A.B.2701), § 41; Stats.2006, c. 404 (S.B.1733), § 3; Stats.2007, c. 130 (A.B.299), § 239.)

**§ 13385.1. "Serious violation", defined; deposit of funds collected for failure to timely file a report; "effluent limitation", defined**

(a)(1) For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

(2) Paragraph (1) applies only to violations that occur on or after January 1, 2004.

(b)(1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(c) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, "effluent limitation" means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

(Added by Stats.2003, c. 609 (A.B.1541), § 1. Amended by Stats.2005, c. 145 (A.B.495), § 1; Stats.2006, c. 538 (S.B.1852), § 677.)

**§ 13385.2. Publicly owned treatment works (POTW) to demonstrate that financing plan is designed to generate sufficient funding to complete compliance program**

(a) Prior to the state board or regional board making its findings pursuant to subdivision (k) of Section 13385, the publicly owned treatment works shall demonstrate to the satisfaction of the state board or regional board that the financing plan prepared pursuant to subparagraph (C) of paragraph (1) of subdivision (k) of that section is designed to generate sufficient funding to complete the compliance project within the time period specified pursuant to subparagraph (A) of paragraph (1) of subdivision (k) of that section.

(b) This section shall only become operative if Senate Bill 1733[1] of the 2005-06 Regular Session is enacted and becomes operative.

(Added by Stats.2006, c. 725 (A.B.1752), § 1, eff. Sept. 29, 2006.)

[1] Stats.2006, c. 404 (S.B.1733)

**§ 13385.3. Operative effect**

(a) The amendments made to subdivision (k) of Section 13385 of the Water Code by Senate Bill 1733[2] of the 2005-06 Regular Session shall become operative on July 1, 2007.

(b) This section shall only become operative if Senate Bill 1733 of the 2005-06 Regular Session is enacted and becomes operative.

(Added by Stats.2006, c. 725 (A.B.1752), § 2, eff. Sept. 29, 2006.)

**§ 13387. Violations; criminal penalties**

(a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than twenty-five thousand dollars ($25,000), for each day in which the violation occurs, by imprisonment for not more than one year in a county jail, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which the violation occurs, by imprisonment in the state prison for 16, 20, or 24 months, or by both that fine and imprisonment.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than fifty thousand dollars ($50,000), for each day in which the violation occurs, by imprisonment in the state prison, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars ($100,000) for each day in which the violation occurs, by imprisonment in the state prison for two, four, or six years, or by both that fine and imprisonment.

(d)(1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars ($250,000), imprisonment in the state prison for 5, 10, or 15 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars ($1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the punishment shall be by a fine of not more than five hundred thousand dollars ($500,000), by imprisonment in the state prison for 10, 20, or 30 years, or by both that fine and imprisonment. A person that is an organization shall, upon

[2] Stats.2006, c. 404 (S.B.1733)

conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars ($2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars ($25,000), by imprisonment in the state prison for 16, 20, or 24 months, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars ($25,000) per day of violation, by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h)(1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2)(A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

(Added by Stats.1987, c. 1189, § 14. Amended by Stats.1996, c. 775 (A.B.2937), § 5; Stats.2001, c. 869 (A.B.1664), § 8; Stats.2003, c. 683 (A.B.897), § 8; Stats.2004, c. 183 (A.B.3082), § 362; Stats.2005, c. 22 (S.B.1108), § 211; Stats.2006, c. 347 (A.B.2367), § 23.)

## Chapter 6. State Financial Assistance
## Article 3. State Water Pollution Cleanup and Abatement Account

### § 13442. Disbursements for clean-up and abatement

Upon application by a public agency with authority to clean up a waste or abate the effects thereof, the state board may order moneys to be paid from the account to the agency to assist it in cleaning up the waste or abating its effects on waters of the state. The agency shall not become liable to the state board for repayment of such moneys, but this shall not be any defense to an action brought pursuant to subdivision (b) of Section 13304 for the recovery of moneys paid hereunder.

(Added by Stats.1969, c. 482, p. 1074, § 18, operative Jan. 1, 1970.)