

LEGISLATIVE COUNSEL'S DIGEST

[*LAEO Suggested revisions in gray highlight. Also see our safeguards against chemical dispersants in LAEO's recommended revisions of NCP CFR 40 Sub Part J language at: http://protectmarinelifenow.org/wp-content/uploads/delightful-downloads/2015/04/LAEO-Public-CommentFF1.pdf](http://protectmarinelifenow.org/wp-content/uploads/delightful-downloads/2015/04/LAEO-Public-CommentFF1.pdf)

SB 414, as amended, Jackson. Oil spill response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. *Existing law authorizes oil spill response organizations to apply to the administrator for a rating for that organization's response capabilities.*

This bill would require the administrator, in cooperation with the United States Coast Guard, to conduct an independent vessel traffic assessment for ~~the San Francisco Bay all deepwater ports~~ that may inform an area rescue towing plan for the ~~3~~ approaches to the ~~Golden Gate~~ ports and to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator to develop and implement ~~a program~~ *regulations for oil spill response organizations* to allow immediate response to an oil spill by contracted fishing vessels and *fishing* crews. *The bill would require the administrator, by regulation, to require oil spill response organizations to have specified oil spill response equipment and sufficient quantities of preauthorized non-toxic oil remediation biological agents deemed appropriate for rapid response application in State waters.* The bill would require the administrator, on or before July 1, 2016, to submit to the Legislature a report assessing the best available technology and equipment *based on the estimated system recovery potential* for oil spill prevention and response.

(2) The act requires operators of specified vessels and facilities to submit to the administrator an oil spill contingency plan to determine whether the plan meets applicable requirements. The act requires an operator to resubmit the plan to the administrator every 5 years.

This bill would require the administrator to adopt, by regulation, methodology to rate the oil spill prevention and response equipment listed in the plan to maintain the best achievable protection standards through the use of equipment that is the best available technology. *The bill would require the administrator, every 5 years, to provide to the Legislature a report that justifies the regulations and methodology. [independent audit of findings should be required by a body like PWSRCAC consulting agency].*

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills. The federal Coastal Zone Management Act *of 1972* (federal act) requires federal agency activities to be carried out in a manner that is consistent, to the maximum extent practicable, with

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an approved state management plan. Existing federal law authorizes the California Coastal Commission, the designated state agency, to conduct federal consistency review to ensure federal agency activities are consistent with the California Coastal Management Program.

This bill would prohibit the use of *chemical dispersant* oil spill cleanup agents in the waters of the state unless 2 specified conditions occur. The bill would require the California Coastal Commission to conduct a federal consistency review for federal policies authorizing the use of oil spill cleanup agents in the coastal waters of the state. DISPERSANTS SHOULD BE ELIMINATED. NOT ALL AGENTS. EFFICACY AND TOXICITY THRESHOLDS ARE THE REAL ISSUE. SEE LAEO LANGUAGE FOR EPA NATIONAL CONTENGENCY PLAN SUB-PART J REVISIONS IN END NOTE.

~~(4) Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to be sufficient to implement oil spill prevention activities. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury and moneys in the fund are available, upon appropriation by the Legislature, for, among other purposes, the implementation, installation, and maintenance of 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.~~

~~This bill would require the administrator, upon appropriation of funds for that purpose, to purchase specified oil spill response equipment, including specified equipment to be stationed on the Santa Barbara coastline.~~

~~(5)~~

(4) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

This bill would provide that the above reduction in the penalty for spills, including inland spills, of greater than 500 gallons, is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill.

~~(6) This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay and for the Santa Barbara coastline.~~

Digest Key

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

Bill Text

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 8670.8.5 of the Government Code is amended to read:

8670.8.5.

(a) The administrator may use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. 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.

(b) (1) The administrator shall develop and implement ~~a program~~ *regulations for oil spill response organizations* to allow immediate response to an oil spill by contracted fishing vessels and *fishing* crews and that shall provide for regularly scheduled emergency drills and training in areas that include the following:

(A) Shoreline protection.

(B) Towing boom and skimmers.

(C) Working with minibarges.

(D) Loading and unloading equipment from response barges.

~~(E) Storage, temporary or permanent, of recovered oil~~

(2) In developing the ~~program, regulations,~~ the administrator shall consider the fishing vessel training program funded and maintained by Alyeska's Ship Escort/Response Vessel ~~System.~~ *System, with regard to training, liability, insurance, compensation, and post response vessel cleanup.*

SEC. 2.

Section 8670.11 is added to the Government Code, to read:

8670.11.

In addition to Section 8670.10, the administrator, in cooperation with the United States Coast Guard, shall establish a schedule of drills and exercises required pursuant to Section 155.4052 of Title 33 of the Code of Federal Regulations. The administrator shall make publicly available the established schedule.

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SEC. 3.

Section 8670.12 of the Government Code is amended to read:

8670.12.

(a) The administrator shall conduct studies and evaluations necessary for improving oil spill response. This shall include organizational, equipment and materials aspects pertaining to, containment, and cleanup and oil spill wildlife rehabilitation in waters of the state and oil transportation systems. Improvement will be based on i) ability to restore contaminated water and land to be capable of supporting life that has no detectable adverse health effects, and ii) net cost to achieve i). NB this point is partially covered in (b) below. 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. *These reviews would then be validated by qualified and independent third party auditors to certify that best available technology and equipment is in fact ready and available for rapid response.*

(b) The administrator shall study the use and effects of oil recovery equipment 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 that provide the greatest degree of protection achievable without imposing costs that significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

(1) Evaluate the effectiveness of ~~chemical~~ chemical, bioremediation, and biological 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 ~~chemical~~ chemical, bioremediation, and biological agents to ensure they are used only in situations where the administrator determines they are effective and safe.

(c) 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.

NOTE: Chemical Agents have very specific definition under NCP rules. Bioremediation and biological agent are one and the same. See key document on different types of bioremediation, biological agents. That science is 15 years out of date and LAEO has updated that science. The Enzyme Additive category of bioremediation could have saved the Santa Barbara Coastline.

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Comment [1]: Suggest delete as biological agents covers this.

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Comment [2]: Delete as redundant

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Comment [3]: If this bill as described in the preamble is suggesting that the use of chemical dispersants be prohibited, why are they listed here under points 1-3, suggest deletion.

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SEC. 4.

Section 8670.12.1 is added to the Government Code, to read:

8670.12.1.

The administrator, in cooperation with the United States Coast Guard, shall conduct an independent vessel traffic risk assessment for ~~the San Francisco Bay that may inform an area rescue towing plan for the three approaches to the Golden Gate.~~ *all deepwater ports that may inform an area rescue towing plan for the approaches to the ports.*

SEC. 5.

Section 8670.13 of the Government Code is amended to read:

8670.13.

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

(b) (1) On or before July 1, 2016, the administrator shall submit a report to the Legislature, pursuant to Section 9795, assessing the best available technology and equipment *based on the estimated system recovery potential* for oil spill prevention and response, including, but not limited to, prevention and response tugs, tractor tugs, salvage and marine firefighting tugs, oil spill skimmers and barges, and protective in-water boom equipment.

(2) In conducting the assessment, the administrator shall consult the peer-reviewed research performed by the Prince William Sound Regional Citizens' Advisory ~~Council.~~ *Council (PWSRCAC) as well as estimated system recovery potential research done at Genwest Systems, Inc., and Spiltec?. These reviews would then be validated by qualified and independent third party auditors to certify that best available technology and equipment is in fact ready and available for rapid response. [PWSRCAC is a qualified 3rd party source established in Alaska, a similar organization should be established for the California, funded by Oil Pollution Fund as is PWSRCAC].*

(3) Pursuant to Section 10231.5, this subdivision is inoperative on July 1, 2020.

(c) Based on the report prepared pursuant to subdivision (b), the administrator shall establish standards for best achievable technologies for oil spill prevention and ~~response.~~ *response no later than July 1, 2017.*

SEC. 6.

Section 8670.13.3 is added to the Government Code, to read:

8670.13.3.

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(a) ~~(A)~~ Notwithstanding any law, *chemical* oil spill cleanup agents shall not be used in response to an oil spill within the waters of the state ~~unless both of the following occur:~~ *state*.

~~*NB: THIS IS CONTRARY TO SECTION 3. EITHER TAKE OUT SECTION 3 OR MAKE THESE SECTIONS CONSISTENT. THIS ELIMINATES BIOLOGICAL AGENTS THAT ARE SAFE, EFFECTIVE. LAEO IS HOPEFUL THAT MANDATING THAT BEST AVAILABLE TECHNOLOGY ASSESSMENTS WILL BE DONE SO AS TO NOT EXCLUDE BIOREMEDIATION ENZYME ADDITIVE AS A VIABLE SOLUTION.*~~

~~<http://protectmarinelifenow.org/wp-content/uploads/delightful-downloads/2015/04/LAEO-5yranniv-Apr2015-OptimizingOilSpillResponseSystems.pdf>~~

~~<http://protectmarinelifenow.org/wp-content/uploads/delightful-downloads/2015/04/Bioremediation-for-Oil-Spill-Response-Oct2014.pdf>~~

~~(i) The administrator establishes, pursuant to Section 8670.13, standards for best achievable technologies for oil spill prevention and response.~~

~~(ii) The United States Environmental Protection Agency adopts amendments to subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.900 et. seq.) governing the use of oil spill cleanup agents, other chemical and biological agents, and other oil spill mitigating substances in responding to oil discharges into water, as set forth in Docket ID No. EPA-HQ-OPA-2006-0090, and the administrator adopts regulations consistent with those federal amendments.~~

~~(B) Upon the occurrence of clauses (i) and (ii), the administrator shall notify the Secretary of State of those occurrences and shall post on the Office of Oil Spill Prevention and Response's Internet Web site a notice of those occurrences.~~

~~(2)~~

~~(b) For purposes of this section, "waters of the state" means any surface water, including saline water, within the boundary of the state.~~

~~(b) The California Coastal Commission, pursuant to Section 307 of the federal Coastal Zone Management Act (16 U.S.C. Sec. 1456) and the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), shall conduct a federal consistency review for federal policy authorizing the use of oil spill cleanup agents in the coastal waters of California.~~

SEC. 7.

Section 8670.31.5 is added to the Government Code, to read:

8670.31.5.

~~The (a) For offshore oil spill response, the administrator shall, by regulation, establish a methodology for rating equipment such as oil containment, skimming, storage, and oil/water~~

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separation technologies, listed in an oil spill contingency plan to maintain the best achievable protection standards through the use of equipment that is the best available technology.

(b) For offshore oil spill response, the administrator shall, by regulation, establish a methodology for rating non-toxic oil spill response agents such as Bioremediation Enzyme Category, a non-microbial agent that can be effectively used on open water spills.

(c) The administrator shall provide a report to the Legislature every five years that justifies the regulations adopted and methodologies established pursuant to subdivision (a). The report to the Legislature shall be delivered as provided in Section 9795 of the Government Code.

SEC. 8.

Section 8670.43 is added to the Government Code, to read:

8670.43.

Pursuant to paragraph (4) of subdivision (e) of Section 8670.40, the ~~administrator, upon appropriation of funds for that purpose, shall do both of the following:~~ *administrator shall require, by regulation, all oil spill response organizations to have in their response fleets both of the following:*

(a) ~~Purchase at~~ *At least two new-generation, high-efficiency disc skimmers to be stationed on the Santa Barbara coastline. skimmers. Capable of rapid response, operable in severe wave conditions, 24 hour usage whilst maintaining safe conditions for operators* This equipment shall include high-efficiency skimming NOFI-~~current busters, Current Busters,~~ *Current Busters,* or their equivalent, and Elastec grooved disc skimmers, or their equivalent.

~~[We respectfully but emphatically point out that it is inappropriate to make any reference whatsoever to any type or brand of recovery equipment within legislation. It automatically prejudices objective assessment of most appropriate technology.]~~ *Suggested language revision for (a)*

(a) At least two new-generation skimmers capable of rapid response, operable in severe wave conditions, 24 hour usage whilst maintaining safe conditions for operators. Best available skimming equipment should be determined based on an objective assessment of alternatives which demonstrate best performance by recovery rate, seaworthiness, safety, range of oil types, rapidity of response, adaptability of equipment for non oil recovery purposes, reliability, net economic effectiveness and its compatibility to be part of a process that restores a spill site to pre spill conditions, capable of supporting healthy living conditions.

~~(b) Purchase a~~ *A purpose-built, prepositioned prevention and response tug with appropriate size, bollard pull, horsepower, propulsion, seakeeping, and maneuverability to meet Det Norske Veritas criteria for emergency towing.*

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SEC. 9.

Section 8670.67.5 of the Government Code is amended to read:

8670.67.5.

(a) Regardless of intent or negligence, any person who causes or permits a spill 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 twenty dollars (\$20) per gallon for a spill. Except as provided in subdivision (d), the amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the release of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in an amount not to exceed sixty dollars (\$60) per gallon for a spill. Except as provided in subdivision (d), the amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(d) (1) For a spill of greater than 500 gallons, the penalty assessed pursuant to subdivision (b) or (c) shall only be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law within two weeks of the start of the spill.

(2) Notwithstanding Section 8670.69.7, any increase in the amount of a penalty assessed for an inland spill resulting from the operation of paragraph (1) shall be deposited in the Environmental Enhancement Fund pursuant to Section 8670.70.

(e) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

SEC. 10.

~~In regard to provisions of this act related to the San Francisco Bay or the Santa Barbara coastline, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique maritime conditions in the San Francisco Bay that affect vessel traffic and the operation of offshore oil drilling platforms near the Santa Barbara coastline.~~

ⁱ Definition for bioremediation agent must be broken down for 3 types of Bioremediation because they are distinctly different from one another and should not be lumped in as one. (see mode of action definitions at: <http://protectmarinelifenow.org/wp-comment/uploads/delightful-downloads/2015/04/Bioremediation-Oil-Spill-Response-Oct-2014.pdf>) This document provides the precise definitions and modes of action for each of the three bioremediation categories.

ⁱⁱ LAEO recommendations for NCP CFR 40 Sub Part J revisions: <http://protectmarinelifenow.org/wp-content/uploads/delightful-downloads/2015/04/LAEO-Public-CommentFF1.pdf>

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