

OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Wildlife, proposes to amend Sections 870.15 through 870.21 in Subdivision 4 of Title 14 of the California Code of Regulations. These sections pertain to OSPR's Oil Spill Prevention and Administration Fund Fee.

PUBLIC HEARING

Pursuant to Gov. Code S. 11346.8(a), **no public hearing has been scheduled** on the proposed action. However, a hearing will be held if OSPR receives a written request for a public hearing from any interested person, no later than 15 days prior to the close of the written comment period. If a hearing is requested, it will be held in Sacramento. **Copies of the written comments submitted will be made available upon request.**

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than **5:00 p.m. on March 15, 2016**, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Joy D. Lavin-Jones
Fax: (916) 324-5662
E-mail: Joy.Lavin-Jones@Wildlife.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals - with changes clearly indicated - will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Section 8670.39 grants the Administrator of OSPR the authority to adopt regulations and guidelines for the Oil Spill Prevention and Administration Fund.

The proposed regulations implement, interpret and make specific Government Code Sections 8670.39 through 8670.41

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's Office of Spill Prevention and Response (OSPR) is responsible for preventing, preparing for, and responding to oil spills. The program for oil spills in marine waters includes oil spill contingency planning, financial responsibility, drills and exercises, performing inspections and investigations, tracking spills, directing spill response and cleanup efforts, and determining appropriate restoration for injured wildlife and lost habitat. Current authority had been limited to activities in marine waters, and did not extend to inland preparedness and response activities. SB 861 (Chapter 35, Statutes of 2014) expanded OSPR's jurisdiction to all "Waters of the State", and in doing so created a Statewide Oil Spill Prevention and Response Program.

This statewide program covers all state surface waters at risk of oil spills from any source, including production facilities, pipelines and the increasing shipments of oil transported by railroads.

Among the program details are the following elements:

- Robust Contingency Plans
- Verification of Financial Responsibility
- Response Equipment & Capability Requirements
- Periodic Drills/Testing, to ensure readiness and competence
- Oiled Wildlife Care Network coverage for the inland area

These proposed amendments make permanent some of the amendments from an emergency rulemaking approved in November 2015 (OAL Matter Number: 2015-1027-01) along with some additional clarifications and removal of language that is redundant to statute.

POLICY STATEMENT OVERVIEW

To fund the comprehensive program created by SB 861, the bill amended Government Code Section 8670.40 to expand the Oil Spill Prevention and Administration Fund fee of six and one-half cents (\$0.065) per barrel to all crude oil and petroleum products received at a marine terminal or refinery by any mode of delivery, which now includes oil delivered by rail. Therefore the primary benefits of the proposed regulations contribute

to the health and welfare of California residents, worker safety, and the State's environment, by ensuring that facilities and railroads are adequately prepared to respond to an oil spill.

There are no alternatives that would ensure protection of our valuable natural resources and meet the statutory requirements of Best Achievable Protection found in Government Code S. 8670.3(b)(1).

The proposed regulations do not differ substantially from existing comparable Federal regulations or statutes because there are no comparable federal regulations or statutes. California's requirements have more comprehensive preparedness and oil spill response activities than the Federal government. OSPR conducted a gap analysis of the Federal requirements and found shortfalls in the Federal government's requirements for sensitive site identification and protection, pre-identified and contracted/owned oil spill response equipment and personnel, Oil Spill Response Organization requirements and testing, financial responsibility requirements, and the requirements for drills and exercises.

The proposed regulations are not inconsistent or incompatible with existing State regulations. State and Federal agencies have regulations for prevention but very few have adequate regulations for preparedness and response.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTION 8670.55

In accordance with Government Code Section 8670.55(a), these regulations have been developed in consultation with the Oil Spill Technical Advisory Committee.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses: The fee to new entities, as mandated by SB 861 (Chapter 35 of the 2013-14 Regular Session), would increase annual revenues by approximately \$11 million. The economic impact to the consumer will likely be negligible. According to figures published by the California Energy

Commission, crude oil price fluctuations cause a change of about two and one-half cents (\$0.025) per gallon in the crude cost for gasoline for every \$1.00 per barrel change in crude oil cost. Given the numbers, if the Administrator chooses to raise the fee one cent (\$0.01), the imposition of the one cent (\$0.01) per barrel increase would arguably only have a \$0.0025 impact on the price of a gallon of gas. Thus, a "typical" driver who drives 15,000 miles per year and whose vehicle gets 20 miles per gallon would see their fuel costs increase by approximately eighteen cents (\$0.18) per year. A three cent (\$0.03) fee increase could potentially increase fuel costs by approximately fifty-four cents (\$0.54) per year. This assumes that consumers incur 100% of the fee increase. In reality, some of the increased fee would be borne by the supplier.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulations:

- Will not result in the creation or elimination of jobs within the State of California;
- Will not result in the creation of new businesses or the elimination of existing businesses within the State of California;
- Will not result in the expansion of businesses currently doing business within the State of California.
- Will provide benefits to the health and welfare of California residents, worker safety, and the state's environment, by providing the funding so that OSPR can ensure that facilities and railroads are adequately prepared to respond to an oil spill, thus meeting OSPR's Best Achievable Protection mandate by potentially eliminating or mitigating the impacts of an oil spill on the environment.

CONSIDERATION OF ALTERNATIVES

OSPR must determine that no reasonable alternative considered by OSPR, or that has otherwise been identified and brought to the attention of OSPR, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF DOCUMENTS
AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

<https://www.wildlife.ca.gov/OSPR/Legal/Proposed-Regulations>

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Shaun Pritchard ((916) 322-7562).