

CHAPTER 8: RESPONSE TECHNOLOGY
SUBCHAPTER 1: LICENSING AND USE OF OIL SPILL CLEANUP AGENTS
Effective August 28, 1998

Article 1. General Provisions

884. Purpose and Scope

This subchapter sets forth the requirements for the licensing and use of oil spill cleanup agents (OSCA). Licensing criteria are established based on the level of toxicity imposed by a given agent. The protocols for using an OSCA are based on the sensitivity of the habitat in which the agent may be used.

The regulations in this subchapter provide specific forms that must be completed by the applicant, and require that the OSCA license be renewed once every five years. Certain products will be considered exempt from the licensing process, but the applicant must petition the Administrator for an exemption to assure that exempted products will be nontoxic in the aquatic environment.

In addition to the regulations in this subchapter, the licensing process will be governed by the criteria and protocols in the "Guidance Document for the Exemption, License and Renewal of Oil Spill Cleanup Agents" (Guidance Document), dated 1/1/98, and herein incorporated by reference. The use criteria for dispersants will be governed by the requirements in this subchapter and the criteria in the "Quick Approval Process for Dispersant Use in Waters Off California", dated 4/14/97, and herein incorporated by reference.

Authority: Section 8670.13.1, Government Code.

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

884.5 Definitions and Abbreviations.

In addition to the definitions found in Government Code §8670.3, and Chapter 1 of this subdivision, the following definitions shall govern the construction of this subchapter.

- (a) "Aquatic toxicity" means that the survivorship of the test organisms in the treatment exposure is less than 90% of those in the control group. Testing to determine if an agent causes aquatic toxicity shall be done in accordance with the testing protocols in the Guidance Document.
- (b) "Bioremediation agent" or "bioremediant" means an OSCA which contains oil-degrading bacteria that serve a seeding function, or nutrients that serve to enhance the growth of naturally occurring bacteria. These agents are deliberately introduced into an oil discharge to increase the rate of biodegradation in an effort to mitigate the effects of the discharge.
- (c) "Collecting agent" means a type of OSCA, the function of which is to absorb, congeal, gel or emulsify oil. The end product of these actions is an agent-oil mass that remains afloat for later collection or burning. Collecting agents include; emulsion treating agents, herding agents, elasticity modifiers, and sorbents.
- (d) "Dispersing agent" or "dispersant" means a type of OSCA, the function of which is to reduce the interfacial surface tension between oil and water. Dispersing agents are surfactant-based chemical compounds, and are composed of both water and oil compatible constituents which allow oil particles to more easily enter the water column.

- (e) "EC50" means Effects Concentration 50, and is the concentration at which 50% of the test organisms display an effect or response to the product being tested during the course of a specified and predetermined time period (e.g. 96 hours).
- (f) "Guidance Document" means the Guidance Document for the Exemption, License and Renewal of Oil Spill Cleanup Agents, dated 1/1/98, which is incorporated by reference herein. This document contains the required exemption, license and renewal forms and the instructions for their completion and use.
- (g) "LC50" means the median Lethal Concentration 50, and is the concentration at which 50% of the test organisms die during the course of a specified and predetermined time period (e.g. 96 hours).
- (h) "Mechanical control device" means any physical device or structure utilized to confine and/or remove oil from the surface of the water or the shoreline.
- (i) "Non-toxic" or "not toxic" means that the survivorship of the test organisms in the treatment exposure is 90% or greater than those in the control group. Testing to determine if an agent is non-toxic shall be done in accordance with the Exemption Petition section of the Guidance Document which requires a Standard LC50 bioassay on specified test species.
- (j) "Oil Spill Cleanup Agent" (OSCA) 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.
- (k) "OSCA" means Oil Spill Cleanup Agent.
- (l) "Sinking agent" means a type of OSCA, the primary function of which is to combine with oil to cause sinking of the agent-oil mass. Sinking agents may not be used in the waters of California.
- (m) "Surface washing agent" means a type of OSCA, the function of which is to facilitate the removal of oil from shoreline substrates or other oiled surfaces. The primary effect of this type of OSCA is to act as a wetting agent to soften or lower the viscosity of the oil, thereby increasing the effectiveness of water in displacing the oil from the shoreline surfaces. A surface washing agent cannot act as a dispersant.

Authority: Sections 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code; and 40 CFR Sections 300.115 and 300.175(b).

Article 2. Licensing Oil Spill Cleanup Agents

885.1 Applicability and Exemptions.

- (a) Any OSCA applied in or on state waters must be licensed by the Administrator unless otherwise exempted, or being used in an expedited testing situation as specified in this Section.
- (b) Exemptions to the license requirement:
 - (1) a manufacturer may request an exemption from the licensing requirements for the following agents and substances;
 - (A) substances such as sorbents and other cleanup devices that do not employ the use of active chemical cleanup agents; or

- (B) substances that do not cause aquatic toxicity when used for purposes of oil spill response.
- (c) Expedited testing and use of an unlicensed OSCA:
- (1) the Administrator or his/her designee may authorize the use of an unlicensed OSCA on an expedited basis in any waters of the state;
 - (2) the unlicensed OSCA must be used in accordance with the criteria established for the particular body of water to which it will be applied, as specified in Article 3 of this subchapter. In addition, such use must be done in consultation with applicable federal agencies and be consistent with the National Contingency Plan.
 - (3) expedited use of an unlicensed OSCA may be authorized if an application for licensing has been submitted but not yet approved or denied, and the following conditions are met:
 - (A) there is danger of impact or harmful effect from an oil spill to the waters of the state; and
 - (B) the Administrator determines that mechanical control devices or currently licensed OSCA's, used either singly or in combination, may not be as appropriate or as effective in the given situation as the unlicensed OSCA; and
 - (C) a preliminary review of the OSCA's license application indicates that the OSCA being tested will not be more hazardous to the aquatic environment than the oil on which it is being applied; and
 - (D) the test has been approved by the Administrator and the RRT, and will be supervised by the Administrator.
 - (4) an expedited test may be conducted for the following purposes;
 - (A) to determine the efficacy of an OSCA in a given situation or on a particular type of oil;
 - (B) to obtain information needed to meet the requirements set forth in Government Code §8670.12;
 - (C) to improve results when used with a currently licensed OSCA and/or a mechanical control device;
 - (D) to mitigate the effects of the oil spill when it is determined that the impact of the OSCA will be less than the impact of the oil.
 - (5) the OSCA may only be used once on an expedited basis during the licensing process;
 - (6) the results of the test shall be documented and made part of the OSCA license application materials.

Authority: Sections 8670.13.1 and 8670.7, Government Code

Reference: Sections 8670.13.1, 8670.13.2 and 8670.7, Government Code;

885.2 Exemption, License and Renewal Applications and Fees.

- (a) Exemption Petition, (form #1958, as found in the Guidance Document):
- (1) a manufacturer must petition for an exemption to the licensing process for any product that might be used in response to an oil spill that could be considered exempt under section 885.1.
 - (A) the following materials will automatically be considered exempt, though the manufacturer must still submit an exemption request form in order to establish the product as available for use in California;
 1. cellulose fibers, other than peat moss or products derived from peat moss,
 2. vermiculite or zeolite,
 3. polypropylene,
 4. polyethylene,
 5. polyurethane,
 6. polyester.
 - (2) the request for exemption must be submitted using the Petition for Exemption, form #1958. This form shall be available from the Administrator upon request.
 - (3) a petition for exemption shall be accompanied by a filing fee, as follows:
 - (A) \$100 for a petition for an inert agent such as those listed in subsection 885.2 (a)(1)(A) above;
 - (B) \$250 for a petition for any other type of agent.
 - (C) The fee shall be used to cover costs incurred by the Administrator in processing the application.
 - (D) The fee shall be counted toward the cost of the license application if the exemption request is denied.
 - (4) Review process:
 - (A) within 14 days of receipt, the Administrator will issue a letter of acknowledgment notifying the applicant that the petition has been received;
 - (B) within 30 days of submittal, the applicant will be notified in writing if the petition is not complete, and will be informed of any additional information required. The petition will not be considered complete until all additional information has been submitted;

(C) the Administrator shall approve or deny the exemption request within 60 days of receiving a complete petition;

1. the exemption shall be approved if the manufacturer can demonstrate that the OSCA is not toxic and does not pose a hazard to the aquatic environment;
2. the applicant shall be notified in writing of the Administrator's determination and the reasons for the decision.

(b) License Application, (form #1959, as found in the Guidance Document):

- (1) the applicant shall apply for a license for an OSCA using a License Application, form #1959. This form shall be available from the Administrator upon request.
- (2) the license shall be valid for a period not to exceed 5 years, and must be renewed prior to the expiration date if the manufacturer wants to continue to have the agent considered available for use during an oil spill.
- (3) each application for a license shall be accompanied by a filing fee of one thousand dollars (\$1000). These fees shall be used to cover the costs incurred by the Administrator in processing the application.
- (4) Review process:
 - (A) within 14 days of receipt, the Administrator will issue a letter of acknowledgment notifying the applicant that the license application has been received;
 - (B) within 30 days of submittal, the applicant will be notified in writing if the application is not complete, and will be informed of any additional information required. The application will not be considered complete until all additional information has been submitted;
 - (C) the Administrator shall approve or deny the license within 60 days of receiving a complete application;
 1. the license shall be approved if the manufacturer can demonstrate the efficacy of the product as an oil spill cleanup agent, and if the product meets all the licensing requirements of this subchapter;
 2. the applicant shall be notified in writing of the Administrator's determination and the reasons for the decision.

(c) License Term and Renewal (form #1967, as found in the Guidance Document):

- (1) The term of a license shall not exceed five years. There is no grace period for renewal. An OSCA may not be used after the expiration of the license.
- (2) The manufacturer must apply for renewal of the license using the License Renewal Form #1967. The renewal forms shall be available from the Administrator upon request;

Each application for renewal shall be accompanied by a filing fee of \$100. This fee shall be used to

cover costs incurred by the Administrator in processing the renewal.

(3) Review process:

- (A) within 14 days of receipt, the Administrator will issue a letter of acknowledgment notifying the applicant that the renewal application has been received. If the renewal application is not complete, the letter of acknowledgment will include a list of any additional information that may be required. The application will not be considered complete until all additional information has been submitted;
- (B) the Administrator shall approve or deny the request for renewal within 30 days of receiving a complete application;
- (C) the license shall be renewed if:
 - 1. the license has not previously been revoked for cause; and
 - 2. the product formulations have not changed or, if changed, the modified formulation has been approved by the Administrator; and
 - 3. the applicant submits a complete application and provides sufficient information to establish that the product meets current licensing criteria.
- (D) the applicant shall be notified in writing of the Administrator's determination and the reasons for the decision.

(d) Appeals

- (1) An applicant may appeal the Administrator's revocation of a license, or denial of an application for exemption, license or renewal;
 - (A) an appeal must be filed in writing within 15 working days of the date the notice of denial was mailed.
 - (B) the appeal must include the applicant's reason(s) for disputing the Administrator's decision. The applicant may include additional test data or other information regarding the OSCA that could be used by the Administrator to reconsider the initial decision.
 - (C) the Administrator will respond to an appeal within 30 days of receipt of the applicant's request for reconsideration.

Authority: Section 8670.13.1, Government Code
Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

885.3 Revoking a License

- (a) The Administrator may revoke a license for the following reasons:
 - (1) the OSCA does not perform as expected when applied to spilled oil;

- (2) the formulation of the OSCA is changed;
- (3) information becomes available that demonstrates that the OSCA is more toxic than previously determined, or has adverse effects in the aquatic environment not previously known or anticipated;
- (4) information on the license or renewal applications is found to be incorrect, incomplete or inaccurate.

(b) Appeals

- (1) A manufacturer may appeal the Administrator's revocation of a license using the process specified in §885.2 of this subchapter.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

885.4 Accuracy of Information and Notification of Changes in Formulation.

- (a) The applicant is responsible for the accuracy, completeness and timely update of all the information submitted in connection with the application to license an OSCA, and all the information stated on the product container label. An update to the application shall be considered timely if it is submitted before the application process is completed, and approval/denial determined. If an update is submitted, the application process timelines will recommence with receipt of the updated material.
- (b) If any of the information on an application is found to be incorrect or inaccurate, the application shall be denied, or the license revoked if already issued.
- (c) Prior to any change in the formulation of an approved product, the applicant shall notify the Administrator in writing and shall obtain specific approval of the change before the OSCA may be used to remove, clean up or otherwise treat oil in California waters.
 - (1) The Administrator may require a new application if there is a significant change in the OSCA formulation. A significant change is one that would alter the allowable use or the recommended application parameters, as specified in Article 3 of this subchapter,
 - (2) Failure to provide notification of a change in formulation is cause for the Administrator to revoke the OSCA license.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

885.5 Testing Required for Licensing.

- (a) Licensing an OSCA is subject to successful screening through:
 - (1) standardized efficacy tests;
 - (2) standardized toxicity tests;

- (3) such other tests as deemed necessary by the Administrator in order to determine the efficacy, toxicity or appropriate use of the OSCA.
- (b) Testing necessary to determine compliance with the efficacy and toxicity criteria shall, as applicable, be conducted consistent with the testing methods or procedures approved by the Administrator, and found in the Guidance Document.
- (c) All tests shall be performed by the applicant or his/her designee. The Administrator or his/her authorized agent may verify or require verification of the results of any tests. Any verification costs incurred by the Administrator will be paid from the applicant's licensing fee.

Authority: Section 8670.13.1, Government Code
Reference: Sections 8670.13.1 and 8670.13.2, Government Code

885.6 Efficacy and Toxicity Criteria.

Each OSCA to be considered for licensing by the Administrator shall comply with the following efficacy and toxicity criteria:

- (a) the OSCA must have a flash point of 170 degrees Fahrenheit or greater ;
- (b) the hydrogen ion activity of a liquid OSCA that is water soluble, as applied to the water surface must be 6.5 to 8.5 pH units ;
- (c) the heavy metal and chlorinated hydrogen content must not be greater than the following concentration(s) in parts per million or milligrams per liter of product:
 - (1) Mercury - 0.005, Cadmium -0.01, Lead -0.05,
 - (2) total identifiable chlorinated hydrocarbon - 0.05.
- (d) the OSCA must perform as indicated by the manufacturer when applied in the manner recommended by the manufacturer;
- (e) bioremediation agents must degrade the oil through microbial action, and neither the bioremediant or its by-products may be more toxic in the aquatic environment than the oil on which applied;
- (f) collecting agents must be nontoxic and, upon application to an oil spill, at least 90 percent of the oil-agent mass must remain afloat;
- (g) dispersant efficacy must be established in accordance with the standardized efficacy tests required by this subchapter, and found in the Guidance Document. If more than 10 percent of the oil sinks upon application of the OSCA, the agent will be considered a sinking agent ;
- (h) no dispersant or surface washing agent shall be licensed if it has an average level of toxicity, greater than 10 mg/l as applied (EC50 less than 10 mg/l) The average level of toxicity of these agents shall be determined by the testing methods described in the Guidance Document.

Authority: Section 8670.13.1, Government Code
Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

885.7 Issuing a License.

- (a) A license shall be issued to the OSCA manufacturer (applicant) on a registered trademark-name basis when the following conditions are met:
 - (1) a completed application has been submitted to the Administrator along with the appropriate fee; and
 - (2) the applicant has conducted the standardized efficacy and toxicity tests, as well as any other relevant tests or requirements prescribed by the Administrator, and provided in this subchapter, and
 - (3) the results of the required tests have been submitted to the Administrator; and
 - (4) the applicant has submitted any additional information as requested by the Administrator to substantiate the test data; and
 - (5) the results of the required tests and any additional, substantiating data meet the efficacy and toxicity criteria established in this Article.
- (b) If the Administrator's Industrial Hygienist determines that the OSCA constitutes a serious occupational hazard to health, the license application will either be:
 - (1) denied; or
 - (2) licensed for use with specified conditions that will adequately minimize or mitigate the occupational health hazard.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code; Title 8, Section 5192, California Code of Regulations

885.8 OSCA Labeling Requirement.

Each OSCA must have a plainly printed label attached to the container that states at least the following:

- (a) the name, brand, and trademark, if any, under which the OSCA is sold;
- (b) the name and address of the manufacturer, importer, or vendor;
- (c) special handling, storage, or worker safety precautions;
- (d) the product's flash point and freezing point, if applicable for the type of product;
- (e) recommended application procedure(s), concentration(s), and conditions for use as regards to water salinity, water temperature, and the types and ages of oils on which it may be used;
- (f) the shelf life, or expiration date of the product .

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

885.9 Legal Responsibility.

Obtaining a license for an OSCA does not waive any other legal responsibilities of the manufacturer or user of an OSCA.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

Article 3. Use of Oil Spill Cleanup Agents

886.1 Requirements for the Use of a Licensed OSCA

- (a) The use, or expedited testing of an OSCA in response to an oil spill shall be subject to the approval of the Administrator and the Regional Response Team (RRT), and done in compliance with the provisions of this subchapter. An OSCA may be used without obtaining the concurrence of the RRT if the OSCA has been listed in a preauthorization plan of the applicable Area Contingency Plan (ACP). Such listing shall have been done in accordance with the provisions of 40 CFR 300, Subpart J, as follows:
- (1) the RRT representative from the Environmental Protection Agency (EPA) and the state of California, and the Department of Commerce (DOC) and Department of Interior (DOI) natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans of the Area Committees;
 - (2) the preauthorization plan of the appropriate ACP must address the specific contexts in which the specified products should and should not be used;
 - (3) the OSCA must then be used in a situation the same as or similar to the context described in the ACP.
- (b) The use of an OSCA shall be supervised by the Department of Fish and Game in accordance with the provisions of this subchapter, and any applicable direction or instruction from the Administrator. Decisions regarding use must be consistent with the statutory provisions governing the duties of the Administrator as outlined in Chapter 7.4 of the Government Code, or the Department's responsibilities pursuant to Fish and Game Code §5655.
- (c) Use of an OSCA in a domestic water supply:
- (1) dispersants, and OSCA's that are not inert, may only be applied to water that is the source of a domestic drinking supply after notification is made to the State Department of Health Services and the appropriate local health agency responsible for drinking water quality; and
 - (2) the OSCA shall be applied in accordance with the recommendations of the state and local health agencies.
- (d) The local Regional Water Quality Control Board shall be notified before any OSCA is applied to a lake, a reservoir or any surface streams.

(e) In addition to the provisions of (a), (b), © and (d) above, the following restrictions and requirements apply to the bodies of water indicated:

(1) Lakes and reservoirs;

(A) Collecting agents:

1. collecting agents that are inert may be applied to lakes and reservoirs provided the floating oil-agent mixture is collected and disposed of properly.
2. collecting agents that are not inert may be applied in domestic water supplies but only in accordance with the provisions in subparagraph © of this section.

(B) Dispersing agents;

1. any application of a dispersant to a domestic water supply shall be in accordance with the provisions of subparagraph © of this section.
2. shall not be applied to the shoreline of a lake or reservoir;
3. aside from 1. and 2. above, dispersing agents may be applied to lakes and reservoirs only if wildlife resources and associated habitat, recreational beaches, marinas or shore facilities are threatened, and other control methods are judged to be inadequate or infeasible by the Department of Fish and Game.

(C) Sinking agents shall not be applied to lakes or reservoirs.

(D) Bioremediation agents may be applied in lakes and reservoirs and associated shorelines provided that the bioremediant, as applied, is not more harmful to the aquatic environment than the spilled oil.

(E) Surface washing agents:

1. surface washing agents that are inert may be applied to the shoreline of surface streams provided that the floating oil-agent mixture is collected and disposed of properly.
2. surface washing agents that are not inert may be applied to domestic water supplies but only in accordance with the provisions in subparagraph (C) of this section.

(2) Surface streams:

(A) Collecting agents;

1. collecting agents that are inert may be applied to surface streams provided the floating oil-agent mixture is collected and disposed of properly.
2. collecting agents that are not inert may be applied in domestic water

supplies but only in accordance with the provisions in subparagraph © of this section.

- (B) Dispersing agents shall not be applied to surface streams.
 - (C) Sinking agents shall not be applied to surface streams.
 - (D) Bioremediation agents may be applied to surface streams and associated shorelines provided that the bioremediant, as applied, is not more harmful to the aquatic environment than the spilled oil.
 - (E) Surface washing agents:
 - 1. surface washing agents that are inert may be applied to the shoreline of surface streams provided that the floating oil-agent mixture is collected and disposed of properly.
 - 2. surface washing agents that are not inert may be applied to a domestic water supply but only in accordance with the provisions in subparagraph © of this section
- (3) Bays and estuaries (from the mouth to the upstream boundary of the tidal prism):
- (A) Collecting agents may be applied to bays and estuaries provided the floating oil-agent mixture is collected and disposed of properly;
 - (B) Dispersing agents;
 - 1. shall not be applied to the shoreline of a bay or an estuary.
 - 2. aside from 1. above, dispersing agents may only be applied in accordance with guidelines established in the “Quick Approval Process for Dispersant Use in Waters Off California” as developed by the California Department of Fish and Game and the National Oceanic and Atmospheric Administration, dated 4/14/97.
 - (C) Sinking agents shall not be applied to a bay or an estuary.
 - (D) Bioremediation agents may be applied to bays and estuaries and the associated tidal shoreline areas provided that the bioremediant, as applied, is not more harmful to the aquatic environment than the spilled oil.
 - (E) Surface washing agents may be applied to the shoreline of bays and estuaries provided that the floating oil-agent mixture is collected and disposed of properly.
- (4) Ocean waters:
- (A) Collecting agents may be applied in ocean waters only if the floating oil-agent mixture is collected and disposed of properly.
 - (B) Dispersing agents;

1. shall not be applied to shoreline areas, including areas exposed during tidal action;
2. aside from 1. above, dispersing agents may only be applied in accordance with guidelines established in the "Quick Approval Process for Dispersant Use in Waters Off California" as developed by the California Department of Fish and Game and the National Oceanic and Atmospheric Administration, dated 4/14/97.

(C) Sinking agents shall not be applied in ocean waters.

(D) Bioremediation agents may be applied to ocean waters and associated tidal shoreline areas provided that the bioremediant, as applied, is not more harmful to the aquatic environment than the spilled oil.

(E) Surface washing agents may be applied to the shoreline of the ocean provided that the floating oil-agent mixture is collected and disposed of properly.

(f) In addition to all other requirements of this section, an OSCA shall be used in accordance with the manufacturer's recommendations.

(g) Use of a licensed OSCA at variance with the provisions of this subchapter may be approved only by the Administrator or his/her designee.

Authority: Section 8670.13.1, Government Code.

Reference: Sections 8670.13.1 and 8670.13.2, Government Code; and 40 CFR Section 300.115.

886.2 Use of an OSCA Prior to Licensing

No OSCA shall be used prior to licensing unless exempt from the licensing requirements, or if used on an expedited testing basis. Expedited testing use shall be in accordance with the provisions of Article 2 of this subchapter.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

886.3 OSCA Endorsement.

Licensing or permission to use a particular type of OSCA shall not be considered an endorsement of any product by the Administrator or the Department of Fish and Game.

Authority: Section 8670.13.1, Government Code

Reference: Sections 8670.13.1 and 8670.13.2, Government Code.

886.4 Penalties

Any person who knowingly, intentionally or negligently violates any provision of this subchapter shall be subject to criminal, civil, and/or administrative civil actions as prescribed in Article 9, Government Code, beginning with Section 8670.57.

Authority: Section 8670.13.1, Government Code.

Reference: Article 9, beginning with Section 8670.57, Government Code.