

**State of California
Office of Administrative Law**

In re:
Office of Spill Prevention and Response

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 870.15, 870.17, 870.19,
870.21

Repeal sections:

**NOTICE OF FILING AND PRINTING ONLY
OF EMERGENCY REGULATION(S) OR
ORDER(S) OF REPEAL**

Government Code Section 11343.8


OAL Matter Number: 2017-0113-04

**OAL Matter Type: Emergency File and Print
Only (EFP)**

The Office of Spill Prevention and Response submitted this emergency file and print action to readopt the changes adopted in OAL File Nos. 2014-1013-04EFP, 2015-1027-01EFP, and 2016-0115-03EFP, which amended sections 870.15, 870.17, 870.19, and 870.21 of title 14 of the California Code of Regulations to implement changes to the statewide oil spill prevention and response program fee pursuant to Senate Bill 861 (Stats. 2014, ch. 931). This is a statutorily deemed emergency and exempt from review by the Office of Administrative Law, pursuant to Government Code section 8670.7.5.

OAL filed this emergency regulation(s) or order(s) of repeal with the Secretary of State, and will publish the emergency regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: January 23, 2017



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Thomas M. Cullen Jr.
Copy: Christine Kluge

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0113-04EFP
-------------------------	---------------------------------	--------------------------	--

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 23 2017

1:39 p.m.

For use by Office of Administrative Law (OAL) only	
<p>NOTICE</p>	<p>REGULATIONS</p>

2017 JAN 13 P 12:40
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY OFFICE OF SPILL PREVENTION AND RESPONSE	AGENCY FILE NUMBER (If any)
--	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) OIL SPILL PREVENTION AND ADMINISTRATION FUND FEE	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0115-03EFP; 2015-1027-01EFP;
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 870.17 AMEND 870.15, 870.17, 870.19, 870.21 REPEAL 870.17, 870.19, 870.21
TITLE(S) 14	LM per agency request 1/23/17

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Government Code Sec. 8670.7.5</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

\$100 Changes Without Regulatory Effect

Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify)

7. CONTACT PERSON

CHRISTINE KLUGE	TELEPHONE NUMBER (916) 327-0910	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Christine.Kluge@wildlife.ca.gov
-----------------	------------------------------------	-----------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 1/12/2017
TYPED NAME AND TITLE OF SIGNATORY ERIC B. MILSTEIN, ASSISTANT CHIEF COUNSEL	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 23 2017

Office of Administrative Law

CALIFORNIA CODE OF REGULATIONS
TITLE 14, DIVISION 1
SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE
CHAPTER 6. FUND ADMINISTRATION
SUBCHAPTER 2. OIL SPILL PREVENTION AND ADMINISTRATION FUND FEE
SECTIONS 870.15 - 870.21
Approved October 23, 2014

Section 870.15. DEFINITIONS.

In addition to the definitions in Chapter 1, Section 790 of this Subdivision, the following definitions shall govern the construction of this subchapter. Where similar terms are defined, the following will supersede the definition in Chapter 1:

- (a) "Board" means the State Board of Equalization.
- (b) "Fee" means the fees imposed pursuant to Article 6 (commencing with Section 8670.38) of Chapter 7.4, Division 1, Title 2 of the Government Code and deposited in the Oil Spill Prevention and Administration Fund in the State Treasury.
- (c) "Petroleum products" means any petroleum-based 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.
- (d) "Waters of the state" or "state waters" means any surface water, including saline waters, marine waters, and freshwaters, within the boundaries of the state but does not include groundwater.

Authority: Sections 8670.39, 8670.40 and 8670.41, Government Code.

Reference: Sections 8670.40 and 8670.41, Government Code.

870.17. PAYMENT OF FEES.

(a) OSPAF Fee Collection

The State Board of Equalization shall collect the Oil Spill Prevention and Administration Fund (OSPAF) fee in an amount determined by the administrator to be sufficient to pay the reasonable regulatory costs to carry out the purposes set forth in Section 870.21, and a reasonable reserve for contingencies. The annual assessment shall not exceed six and one-half cents (\$0.065) per barrel of crude oil or petroleum products. The OSPAF fee shall be based on each barrel of crude oil or petroleum products, as described in subsection (b).

- (b) (1) The OSPAF fee shall be imposed upon a person owning crude oil at the time that the crude oil is received at a marine terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from within or outside the state, and upon a person who owns petroleum products at the time that those petroleum products are received at a marine

terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products for each barrel of crude oil or petroleum products received.

(2) The OSPAF fee shall be imposed upon a person owning crude oil or petroleum products at the time that the crude oil or petroleum products are received at a refinery within the state by any mode of delivery that passed over, across, under, or through waters of the state, whether from within or outside the state. The refinery shall collect the fee from the owner of the crude oil or petroleum products for each barrel received.

(3) There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or a refinery have passed over, across, under, or through waters of the state. This presumption may be overcome by a marine terminal operator, refinery operator, or owner of the crude oil or petroleum products by demonstrating that the crude oil or petroleum products did not pass over, across, under, or through waters of the state. Evidence to rebut the presumption may include, but shall not be limited to, documentation, including shipping documents, bills of lading, highway maps, rail maps, transportation maps, related transportation receipts, or other information that shows the crude oil or petroleum products did not pass over, across, under, or through waters of the state.

(4) The OSPAF fees shall be remitted to the State Board of Equalization by the owner of the crude oil or petroleum products, the refinery operator, or the marine terminal operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a refinery or marine terminal during the preceding month. A fee shall not be imposed with respect to 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 already been collected by a refinery or marine terminal operator or paid to the State Board of Equalization.

(5) The OSPAF fee shall not be collected by a marine terminal operator or refinery operator or imposed on the owner of crude oil or petroleum products if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. The OSPAF fee shall not be collected by a marine terminal or refinery operator on petroleum products derived from crude oil upon which the fee was already assessed. It shall be the obligation of the marine terminal operator, refinery operator, or owner of crude oil or petroleum products to demonstrate that the fee has already been paid on the same crude oil or petroleum products. It is the intent that the OSPAF fee on barrels of crude oil or petroleum products only be imposed and collected upon first delivery to a refinery or marine terminal, and not upon subsequent movement of that same oil or products derived after that first delivery. Nothing in this section shall prohibit the State Board of Equalization from determining the appropriate collection point at the marine terminal or refinery.

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

(c) Nontank vessel fee :

The Administrator shall impose a fee per nontank vessel, to be collected with each new or renewal application to obtain a certificate of financial responsibility. The fee shall be levied as follows:

- (1) Operator(s) or owner(s) of nontank vessels with a carrying capacity of over 6,500 barrels, or over 7,500 barrels for nontank vessels owned and operated by California or a federal agency, shall submit a nonrefundable USD \$3,250 fee per vessel, or;
- (2) Operator(s) or owner(s) of nontank vessels that have a carrying capacity greater than 500 barrels of oil and less than or equal to 6,500 barrels of oil, or a carrying capacity greater than 500 barrels of oil and less than or equal to 7,500 barrels of oil for nontank vessels owned and operated by California or a federal agency, shall submit a nonrefundable USD \$1,950 fee per vessel, or;
- (3) Operator(s) or owner(s) of nontank vessels that have a carrying capacity of 500 barrels of oil or less shall submit a nonrefundable USD \$650 fee per vessel.
- (4) Do not deduct any processing fees from the per vessel fee.

Authority: Sections 8670.39, 8670.40 and 8670.41, Government Code.

Reference: Sections 8670.40 and 8670.41, Government Code.

870.19. DETERMINATION OF THE OSPAF FEE.

(a) 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 that plan, the Administrator shall set the OSPAF fee so that the projected revenues, including any interest, are equivalent to expenses over the period covered by the plan. In setting the OSPAF 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 a surplus is necessary to cover possible contingencies.

(1) Based upon the January 20 assessment, the Administrator may authorize the collection of a fee lower than six and one-half cents (\$0.065) if the lower fee will result in the collection of sufficient monies during that state fiscal year to fund the purposes set forth in Section 870.21.

(2) The Administrator may suspend collection of the lower fee at any time. If the lower fee is suspended, the fee level shall return to the previously established rate of up to six and one-half cents (\$0.065) per barrel of crude oil or petroleum product and shall remain at the increased level for the balance of the fiscal year.

(b) Whenever the Administrator determines that the fee level shall be changed, the Administrator shall notify the Board in writing within 5 days of making the determination. The Board shall then notify fee payors of the new fee level within 30 days of receiving the determination from the Administrator. The new fee level shall then become effective 30 days after the fee payors have been notified by the Board.

(c) The data used to determine the fee level shall be provided by the Administrator to interested parties upon request.

Authority: Section 8670.39(b) and 8670.40, Government Code.

Reference: Section 8670.40(a), Government Code.

870.21. OSPAF FEE USAGES.

(a) All fees levied under this chapter shall be deposited in the Oil Spill Prevention and Administration Fund in the State Treasury. Money in this fund shall be used only for 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 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.

(5) To reimburse the State Board of Equalization for its reasonable 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.

(6) To fund the Oiled Wildlife Care Network pursuant to Government Code Section 8670.40.5.

(b) The moneys deposited in the fund shall not be used for responding to a spill.

(c) The moneys deposited in the fund shall not be used to provide a loan to any other fund.

Authority: Sections 8670.39(b) and 8670.40, Government Code.

Reference: Sections 8670.4, 8670.40 and 8670.56, Government Code.