

**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: 798

**Amend sections: 791, 791.6, 791.7, 792, 793,
794, 795, 796, 797**

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: 2015-0825-03

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

This emergency regulatory action by the Office of Spill Prevention and Response (Office) amends sections 791, 791.6, 792, 793, 794, 795, 796, 797 and adopts section 798 of title 14 of the California Code of Regulations (CCR) to implement changes to the statewide oil spill prevention and response program pursuant to Senate Bill 861 (Stats. 2014, ch. 931).

OAL filed these emergency regulations with the Secretary of State, and will publish the emergency regulations in the California Code of Regulations.

Date: September 3, 2015



Peggy J. Gibson
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Thomas M. Cullen Jr.
Copy: Joy Lavin-Jones

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0825-03EFP
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ENDORSED - FILED

in the office of the Secretary of State of the State of California

SEP 3 2015

2:06 PM

For use by Office of Administrative Law (OAL) only

2015 AUG 25 P 3:32
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

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		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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE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) CERTIFICATES OF FINANCIAL RESPONSIBILITY	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT Forms: DFW 1946, DFW 1932, DFW 1931 798 per agency request
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 791, 791.6, 791.7, 792, 793, 794, 795, 796, 797; Forms: DFW 1962, DFW 1961
TITLE(S) 14	REPEAL

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 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 §511349.3, 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 checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Government Code S. 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)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) <u>per agency request</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM 56660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON JOY LAVIN-JONES	TELEPHONE NUMBER 916-327-0910	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Joy.Lavin-Jones@Wildlife.ca.gov
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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 8/25/15
TYPED NAME AND TITLE OF SIGNATORY Eric B. Milstein, Assistant Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 03 2015

Office of Administrative Law

TITLE 14, CALIFORNIA CODE OF REGULATIONS SUBDIVISION 4,
OFFICE OF SPILL PREVENTION AND RESPONSE
CHAPTER 2. FINANCIAL RESPONSIBILITY
SUBCHAPTER 1. CERTIFICATES OF FINANCIAL RESPONSIBILITY
SECTIONS 791 - 797

Amended 9/1/15

791. 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 any definition in Chapter 1:

Subsection (a): No Change.

- (b) "Certificant" means an owner or operator or a person accepting responsibility for the oil who has been issued a Certificate of Financial Responsibility under this subchapter.
- (c) "Certificate of Financial Responsibility" ("Certificate" or "COFR") means an official written acknowledgment issued by the Administrator that an owner or operator of a tank vessel, nontank vessel, vessel carrying oil as a secondary cargo, ~~marine~~ facility, or the owner of the oil has demonstrated to the satisfaction of the Administrator the financial ability to pay for costs and damages caused by an oil spill.

Subsections (d) and (e): No Change.

- (f) "Reasonable Worst Case Oil Spill" ~~is defined~~ means a volume of oil in barrels as defined and determined in Chapter 3 of this subdivision where the term is used at: Marine Facility – Section 817.02(d)(4); Small Marine Fueling Facility – Section 817.03(d)(4); Tank Vessel – Section 818.02(e)(4); Vessels Carrying Oil As Secondary Cargo – Section 818.03 (e)(4); Inland Facility – Section 817.04(k) and Nontank Vessel – 827.02(h)(4).

Subsection (g): No Change.

Authority: Sections 8670.7.5, 8670.37.53 and 8670.37.54, Government Code.

Reference: Sections 8670.3 and 8670.37.51-8670.37.58, Government Code.

791.6 PURPOSE AND SCOPE

- (a) The purpose of this subchapter is to specify the procedures and timelines for ~~managing~~ obtaining and renewing a Certificate of Financial Responsibility. Certificates of Financial Responsibility are not required if exempted from contingency plan requirements pursuant to Section 817.01(b), 818.01(b), 827.01(b) or 817.04(c).
- (b) (1) ~~Before operating in California, all operators or owners of tank vessels or the owners of the oil contained therein, nontank vessels, and marine facilities~~ Any vessel or facility owner/operator required to have an oil spill contingency plan pursuant to Subchapter 3 of Chapter 3 of Subdivision 4 of Division 1 of Title 14 of the California Code of Regulations shall demonstrate to

the satisfaction of the Administrator the financial ability to pay for costs and damages caused by a spill. The owner or operator shall do so by applying for and have been being issued a valid Certificate of Financial Responsibility (hereafter referred to as a certificate).

(2) The For any new or renewal applications for vessels only, new or renewal application, applicable fees and any evidence offered to demonstrate of financial responsibility, and fee if applicable shall be received by OSPR at least ten (10) calendar days prior to operating or entering marine waters where a spill may impact Waters of the State. After expiration of any of the methods of evidence of financial responsibility listed in Section 795 of this subchapter, documentation of the financial responsibility renewal shall be provided at least 10 ten (10) calendar days before operating in California waters where a spill may impact Waters of the State.

(3) An owner or operator of an Inland Facility operating within the state must submit an application for a Certificate of Financial Responsibility to OSPR for review by January 1, 2016. OSPR shall review the application within thirty (30) calendar days.

(4) If at any the Administrator determines this subchapter shall be applicable to an Inland Facility that had been given an exemption or for which this subchapter had been deemed inapplicable, the Inland Facility owner or operator shall submit an application within one hundred twenty (120) days for review. OSPR shall review the application within thirty (30) calendar days.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.56 and 8670.37.58,
Government Code. Reference: Sections 8670.37.54-8670.37.56, Government Code.

791.7. PROCEDURES FOR APPLICATION FOR CALIFORNIA CERTIFICATE OF FINANCIAL RESPONSIBILITY.

Subsections (a)(1) through (a) (6): No Change.

(7) Application for Certificate of Financial Responsibility for Railroads, referred to as DFW Form 1931 (03/20/15).

(8) Application for Certificate of Financial Responsibility for Inland Facilities (other than Railroads), referred to as DFW Form 1932 (03/15).

(7 9) These forms shall collectively be referred to as applications and incorporated by reference herein.

(8 10) The applications shall be obtained from and, upon completion, submitted to the Office of Spill Prevention and Response (OSPR) at the following address:

Department of Fish and Wildlife
Office of Spill Prevention and Response (OSPR)
1700 K Street, Suite 250
Sacramento, CA 95811 USA
www.dfg.ca.gov/ospr

(b) Any facility owner/operator may request exemption from the requirement to obtain a certificate on the basis that a spill from the facility could not reasonably be expected to impact ~~marine waters~~ Waters of the State.

- (1) Such request must be submitted to the Administrator and must provide specific, technical justification for the request.
- (2) Prior to granting or denying the request, the Administrator may inspect the facility to determine if a spill from the facility could potentially impact ~~marine waters~~ Waters of the State.

Subsections (b)(3) through (d): No Change.

(e) Application processing by OSPR - Small Barges, Marine and Inland Facilities, Small Marine Fueling Facilities, Mobile Transfer Units, and Vessels Carrying Oil As Secondary Cargo

- (1) Applications regarding small barges, marine and inland facilities, small marine fueling facilities (as defined in Section 790 of this subdivision), mobile transfer units, and vessels carrying oil as secondary cargo (as defined in Section 790 of this subdivision) will be reviewed and applicants notified of the amount of financial responsibility required within ~~twenty-one (21)~~ thirty (30) calendar days of receipt by the OSPR.
- (2) The OSPR shall determine the amount of financial responsibility as follows:

Subsections (e)(2)(A) through (e)(2)(F): No Change.

(G) for Inland Facilities (including railroads):

1. The product of the Reasonable Worst Case Spill volume in barrels (as determined in the applicant's oil spill contingency plan (pursuant to Title 14, California Code of Regulations S. 817.04(k)(3), as applicable)) multiplied by \$10,000.

- (3) Evidence of financial responsibility must be submitted within twenty-one (21) calendar days from the date applicant receives notice of the amount of financial responsibility. The Administrator may waive the twenty-one (21) day period for submitting such evidence.
- (4) Certificates will be issued ~~for small barges, marine facilities, small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo~~ within ten (10) business days following the receipt of acceptable evidence of financial responsibility by OSPR, as determined by the Administrator. The criteria for demonstrating financial responsibility are set forth in Section 795 of this subchapter.

Subsections (e)(5): No Change.

(f) Application renewals.

- (1) Certificate renewal applications are sent to the applicant approximately forty-five (45) days prior to the expiration of the existing certificate. In order to renew a certificate, renewal applications must be submitted prior to the expiration date.

- (2) If at any time after a certificate has been issued, a certificant becomes aware of a material change in any facts contained in the application or supporting documents, which includes, but is not limited to, the certificant ceasing to be the owner or operator of the ~~tanker, barge, nontank vessel, or marine facility~~, applicable vessel or facility, or the owner of the oil; or that the method of demonstrating financial responsibility will be terminated or any coverage thereunder will cease; the certificant shall notify OSPR, in writing, within five (5) business days of becoming aware of the material change. If there is a change in applicant name, or vessel name change, or if the certificate expires, a new certificate will be necessary.

Subsections (f)(3) through (g): No Change.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.58 and 8670.41 Government Code.
Reference: Sections 8670.37.53, 8670.37.54, 8670.37.58 and 8670.41, Government Code.

792. CERTIFICATION REQUIREMENTS: TANKERS, NONTANK VESSELS, LARGE BARGES, AND OWNERS OF OIL.

- (a) Each tanker or barge operator or owner who transports oil across ~~California marine waters~~ Waters of the State, or the owner(s) of all the oil contained in and to be transferred to or from the tanker or barge, or the person accepting responsibility for the oil, or each nontank vessel operator or owner ~~entering the marine~~ operating in wWaters of the sState, shall ~~obtain~~ apply for a certificate issued by the Administrator prior to operating in ~~California marine waters~~ Waters of the State.

Subsections (b) through (d): No Change.

- (e) If the operator or owner of a vessel intends to rely on the certificate(s) issued to the owner(s) of or person (s) accepting responsibility for the oil cargo, the vessel operator shall, at least twenty-four (24) hours prior to ~~transporting the oil across California marine waters~~ operating in Waters of the State, provide the Administrator with the following:
- (1) A a copy or copies of the certificate(s) applicable to all of the oil at all times during the transport; and
 - (2) A a copy of a written statement by the holder(s) of the applicable certificate(s) authorizing its (their) application to the vessel.

Subsections (f) through (g): No Change.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.51, 8670.37.53 and 8670.37.58, Government Code. Reference: Sections 8670.37.51-8670.37.58 and 8670.56.6, Government Code.

793. CERTIFICATION REQUIREMENTS: SMALL BARGES, MARINE FACILITIES, INLAND FACILITIES, SMALL MARINE FUELING FACILITIES, MOBILE TRANSFER UNITS, AND VESSELS CARRYING OIL AS SECONDARY CARGO.

- (a) Operators or owners of small barges, marine facilities, inland facilities, small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo shall demonstrate the financial ability to pay for any damages arising from an oil spill resulting from ~~the~~ their operations, ~~of the small barge, marine facility, small marine fueling facility, mobile transfer unit, or vessel~~

~~carrying oil as secondary cargo.~~

- (b) Each operator or owner of a small barge, marine facility, inland facility, small marine fueling facility, mobile transfer unit, or vessel carrying oil as secondary cargo shall obtain a Certificate of Financial Responsibility from the Administrator.

Subsections (c) through (g): No Change.

- (h) The Administrator shall determine the amount of financial responsibility that owners or operators of small barges, marine facilities, inland facilities, small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo must demonstrate. The amount shall be based on the procedures described in Subsection 791.7(e)(2) of this subchapter.

Subsections (i) through (k): No Change.

Authority: Sections 8670.7.5, 8670.37.51, 8670.37.53 and 8670.37.54, Government Code. Reference: Sections 8670.37.51-8670.37.57 and 8670.56.6, Government Code.

794. MULTIPLE VESSELS/FACILITIES CERTIFICATIONS.

Subsections (a) and (b): No Change.

- (c) An oil spill or spills occurring from one or more tankers, barges, ~~or nontank vessels, or marine facilities, or inland facilities~~ within or outside of ~~California marine waters~~ Waters of the State, which may cause the certificate holder(s) to be liable for damages exceeding five percent (5%) of the total financial resources reflected by the certificate, as determined by the Administrator, shall cause the Administrator to:
 - (1) ~~i~~ Immediately review the ~~certificate holder's~~ certificants' financial resources to determine the applicability of this section to the certificate holder and notify the holder of the results of the review prior to issuing a determination that the certificate is inapplicable to any ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility not associated with the spill; and
 - ~~(2) where a determination is made that the certificate is inapplicable, provide the certificate holder reasonable time to cease necessary operations; and~~
 - ~~(3 2) e~~ Consider the certificate inapplicable to any ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility not associated with the spill; ; and
 - (3) Require the Certificant to demonstrate to the satisfaction of the Administrator financial responsibility for the vessels or facilities not associated with the spill, pursuant to the process described in this Chapter.
- (d) Operators or owners holding certificates deemed inapplicable to any ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility not associated with the spill(s), pursuant to Subsection (c) above, shall reapply for a certificate for any or all ~~tanker(s), barge(s) or nontank~~ vessel(s) or ~~marine~~ facility(s) not associated with the spill. Upon reapplication, the operator(s) or owner(s) shall demonstrate to the satisfaction of the Administrator that:

- (1) ~~The~~ operator(s) or owner(s) has (have) the amount of financial ability required pursuant to this subchapter; and
- (2) ~~The~~ operator(s) or owner(s) has (have) the financial ability to pay all damages which arise or have arisen from the spill or spills which have occurred.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.55 and 8670.37.58, Government Code. Reference: Section 8670.37.55, Government Code.

795. EVIDENCE OF FINANCIAL RESPONSIBILITY.

In the application submitted pursuant to Section 791.7, financial responsibility must be demonstrated by an applicant using the method(s) described below:

Subsections (a)(1)(A): No Change.

- (B) a certificate of insurance that is acceptable to the Administrator and an endorsement executed by the underwriter or insurer which contains the language set forth in the California standard endorsement. Refer to the Endorsement for Vessels Calling Upon California - Oil Spill Liabilities, FG OSPR Form 1929 (2/08) for endorsements to policies for tankers, barges or nontank vessels; and to Endorsement for Marine Facilities - Oil Spill Liabilities, FG OSPR Form 1962 (~~2/08~~ 3/16/15) for endorsements to ~~policies for marine facilities (other than mobile transfer units)~~; and to the Endorsement for Mobile Transfer Units and Transportable Treatment Units - Oil Spill Liabilities, FG OSPR Form 1930 (2/08) for endorsements to policies provided as evidence of coverage for mobile transfer units and transportable treatment units, incorporated by reference herein.

Subsections (a)(1)(C) through (a)(2): No Change.

- (3) (A) No later than thirty (30) calendar days following the expiration of the current policy period, certificants using insurance as evidence of financial responsibility shall submit a certificate of insurance, or other written documentation acceptable to the Administrator evidencing that the renewal of certificant's insurance policy occurred on or before the previous policy's expiration date. Failure to submit the certificate of insurance or other acceptable written documentation within thirty (30) calendar days following the expiration of the current policy period, or at least 10 calendar days before operating in ~~California waters~~ Waters of the State, may result in the revocation of the certificate as outlined in section 796 of this subsection.
- (B) No later than forty-five (45) calendar days following the expiration of the current policy period the certificant shall also submit a copy of that portion of the renewal policy that includes language that the policy covers damages as specified in Government Code Section 8670.56.5; an Endorsement form (FG OSPR Form 1929 (2/08), FG OSPR Form 1930 (2/08), or FG OSPR Form 1962 (~~2/08~~ 3/16/15)); other documentation which contain the minimum information set forth in Subsection (a)(1) above; or similar or comparable evidence of insurance acceptable to the Administrator. Any additional terms or limitations which may affect coverage, including the renewal and new

expiration dates, shall be included. Failure to submit the endorsement or other acceptable written documentation within forty-five (45) calendar days following the expiration of the current policy period, or at least 10 calendar days before operating in ~~California waters~~ Waters of the State, may result in a revocation of the certificate as outlined in section 796 of this subsection.

Subsections (a)(4) through (c)(4): No Change.

- (5) Applicants utilizing surety bonds to demonstrate evidence of financial responsibility shall establish a standby trust fund. The Trust Agreement shall be in the form prescribed by this subchapter. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (~~3/97~~ 3/15/15) for ~~marine~~ facilities, and FG OSPR Form 1948 (3/15/15) for other entities under OSPR's jurisdiction, incorporated by reference herein, for approved language. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with the Administrator's instructions.

Subsections (d)(1) and (d)(2) No Change.

- (3) An applicant utilizing a letter of credit to demonstrate evidence of financial responsibility shall establish a standby trust fund. The Trust Agreement shall be in the form prescribed by this section. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (~~3/97~~ 3/15/15) for marine facilities for approved trust agreement language. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the State of California shall be deposited by the issuing institution directly into the standby trust fund in accordance with the Administrator's instructions.

Subsections (e)(1) through (5): No Change.

- (6) Applicants utilizing guarantees shall establish a standby trust fund.
 - (A) The Trust Agreement shall be in the form prescribed by this section. Refer to FG OSPR Form 1926 (3/99) for tankers, barges or nontank vessels/owners of oil and FG OSPR Form 1961 (~~3/97~~ 3/15/15) for marine facilities for approved language.
 - (B) Under the terms of the guaranty, all payments made thereunder shall be deposited by the guarantor directly into the standby trust fund in accordance with the Administrator's instructions.
 - (C) Where the guarantor is the parent corporation of the applicant, the requirement to establish a standby trust fund is waived.

Subsections (f) though (i): No Change.

Authority: Sections 8670.7.5, 8670.37.53, 8670.37.54 and 8670.37.58, Government Code. Reference: Sections 8670.37.53 and 8670.37.54, Government Code.

796. CERTIFICATE REVOCATION.

- (a) A certificate may be revoked immediately with concurrent written notice by the Administrator to the certificant for any of the following reasons:
- (1) ~~M~~making a false material statement in connection with an application for or renewal of a certificate;
 - (2) ~~F~~failure to establish or maintain evidence of financial responsibility as required by this Subchapter;
 - (3) ~~W~~hen the holder of the certificate is no longer the owner or operator of the ~~tanker, barge or nontank~~ vessel or ~~marine~~ facility, or owner of the oil in question; or
 - (4) ~~W~~hen the certificant did not provide their evidence of financial responsibility within the time frames specified by this Subchapter.

Subsections (b) through (d): No Change.

Authority: Sections 8670.7.5, 8670.37.54, 8670.37.56 and 8670.37.58, Government Code.

Reference: Sections 8670.37.54-8670.37.56, Government Code.

797. REPORTING AND SUSPENSION.

- (a) The certificant shall provide written notification to the Administrator of an event which could produce a material change that affects the certificant's ability to comply with the financial responsibility requirement. Such events include, but are not limited to, an oil spill or discharge occurring within or outside of ~~California marine waters~~ Waters of the State from one or more tankers, barges or nontank vessels, ~~or marine facilities,~~ inland facilities or other facilities for which the certificant may be liable for damages, or other significant action against the certificant (e.g., bankruptcy, insolvency). Additionally, the certificant must notify the Administrator in writing of any potential liability that could produce a material change that affects the certificant's ability to comply with the financial responsibility requirement. Written notification must be submitted within ten (10) business days of knowledge of the incident or knowledge of sufficient facts which would lead a reasonably prudent person to investigate and learn of the incidents. For purposes of this subsection, "material change" means an event or action which could cause the certificant to be liable for damages in an amount exceeding five percent (5%) of the total financial resources reflected by the certificate or, if owners' equity exceeds the total amount of financial resources reflected by the certificate, five percent (5%) of the owners' equity.

Subsections (b) through (e): No Change.

Authority: Sections 8670.7.5, 8670.37.54(b), 8670.37.56 and 8670.37.58, Government

Code. Reference: Sections 8670.37.54-8670.37.56, Government Code.

798. SEVERABILITY.

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

Authority: Sections 8670.7.5, 8670.37.54(b), 8670.37.56 and 8670.37.58, Government Code. Reference: Sections 8670.37.54-8670.37.56, Government Code.



WARNING: For security purposes all ZIP files transmitted to DFW/OSPR via-email will be returned undeliverable.

NOTE: A Contingency Plan is also required, pursuant to Government Code Section 8670.29

Please type or print clearly in English when completing this application. Refer to pages 8 and 9 of application for instructions on completing this form.

SECTION A. GENERAL INFORMATION

1. Legal name of applicant:

2. Mailing

3. Telephone:

4. Email address:

5. Address of principal place of business of applicant if different from above.

6. Trade name (if any), dba, or other name generally known to the public

7. Financial contact person information: name, address, title, telephone, facsimile, and email address.

Contact Name:

Title:

Mailing Address:

Telephone number:

Facsimile number:

Email address:

8. If applicant is a subsidiary or not wholly owned, provide the following information:

a. Name of parent corporation or owning entities:

Mailing

b. Date and state of incorporation of parent corporation/owning entities:

Date:

State:

9. Certificate(s) recipient (who should receive certificates) including name, address, telephone, facsimile, email address. (NO P.O. Boxes)

Recipient Name:

Mailing Address:

Telephone number:

Facsimile number:

Email address:

10. Agent for Service of Process. Agent must provide U.S. address. No P.O. Boxes.

Name:

Mailing Address:

Telephone number:

SECTION D. DECLARATION
(Must be completed by all applicants)

I, _____ (print name) am the applicant, or I am a principal of the applicant, an authorized agent*, or an official of the applicant, and have the authority to sign this application on behalf of the applicant. I DECLARE under penalty of perjury that I have examined this application, including all accompanying schedules and statements, and to the best of my knowledge, information and belief, find it to be true, correct, and complete. Furthermore, it is agreed that the applicant named in Section A of this application is the responsible party in the event of an oil spill. I execute this declaration in my capacity as applicant, principal of the applicant, official of the applicant or as the authorized agent as evidenced by the delegation of such authority provided below.

DATE

Signature

Title or Official Capacity

NOTE: If the Declaration is signed by an authorized agent of the applicant, the applicant or a principal of the applicant must sign the following Section E. Delegation of Authority

SECTION E. DELEGATION OF AUTHORITY BY THE APPLICANT

(Must be completed by the applicant or principal of the applicant if the above declaration has been executed by an agent acting on behalf of the applicant)

I, (name of the applicant) hereby declare that (name of authorized agent whose signature appears in Section D) is authorized to submit an application for a California Certificate of Financial Responsibility on behalf of the applicant.

DATE

Signature

Title or Official Capacity

INSTRUCTIONS

1. Owner or operator means, in the case of a railroad facility, any person who owns, has ownership interest in, or operates the railroad facility.
2. Submit completed application by selecting one of the following methods:

U.S. Mail or Courier Service:

Department of Fish and Wildlife
Office of Spill Prevention and Response (OSPR)
1700 K Street, Suite 250 Sacramento, CA
95811

Fax: (916) 323-4727

Email: cacofr-facilities@wildlife.ca.gov

WARNING: For security purposes all ZIP files transmitted to DFW/OSPR via email will be returned undeliverable.

1. **Application Process:** Applications will be reviewed within 30 calendar days of receipt provided that adequate information was furnished in the application and acceptable evidence of financial responsibility has been received. OSPR verifies the amount of financial responsibility provided per the formulas located in regulation.

To calculate financial responsibility, see Section 791.7 (e) (2) A-F at <https://www.wildlife.ca.gov/OSPR/Legal/OSPR-Regulations-Index>

Renewal Process: COFRs for facilities are good for two (2) years. COFRS for mobile transfer units are good for one (1) year. Applications will be reviewed within 30 calendar days of receipt provided that adequate information was furnished in the application and acceptable evidence of financial responsibility has been received.

NOTE: Use of self-insurance requires submission of audited financial statements annually.

5. Specific instructions relating to the application process.

Section A - General Information: MUST BE completed by all applicants.

Section B - Description of Facility: Description of the Facility: must be completed by all applicants. (If application applies to more than one facility, for each facility list the specific information required in Section C on separate sheets.)

Section C - Specific Description of the Facility or Facilities:

The facility is a large, modern building with a flat roof and extensive glass windows. It is situated on a large plot of land with a parking lot in front. The building is surrounded by a fence and has a sign that reads "DFW 1931 Railroad". The facility is used for the storage and maintenance of railroad equipment and materials. It has a large open area for storage and a smaller area for office and administrative use. The building is well-maintained and has a professional appearance. The surrounding area is mostly open fields with some trees and a few other buildings in the distance. The sky is clear and blue, suggesting a bright day. The overall impression is of a well-organized and functional facility.

Railroad Facility: Must be completed by the owner or operator of a railroad that transports oil as cargo.

Section D - Declaration

- a. If a question does not apply, answer "not applicable."
- b. Incomplete applications will not be processed until OSPR receives additional information needed for processing.
- c. If additional space is required, supplemental sheets may be attached.

Please contact the Financial Responsibility Unit at (916) 445-9338 if you have any questions.

State of California - Department of Fish and Wildlife
APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY FOR
INLAND FACILITIES
DFW 1932 (New 7/01/2015) Page 1 of 7



WARNING: For security purposes all ZIP files transmitted to DFW/OSPR via-email will be returned undeliverable.
NOTE: A Contingency Plan is also required, pursuant to Government Code Section 8670.29

Please type or print clearly in English when completing this application. Refer to pages 8 and 9 of application for instructions on completing this form.

SECTION A. GENERAL INFORMATION

- 1. Legal name of applicant:
- 2. Mailing
- 3. Telephone:
- 4. Email address:
- 5. Address of principal place of business of applicant if different from above.
- 6. Trade name (if any), dba, or other name generally known to the public
- 7. Financial contact person information: name, address, title, telephone, facsimilie, and email address.

Contact Name:
 Title:
 Mailing Address:

 Telephone number:
 Facsimile number:
 Email address:

8. If applicant is a subsidiary or not wholly owned, provide the following information:

a. Name of parent corporation or owning entities:

Mailing

b. Date and state of incorporation of parent corporation/owning entities.

Date:

State:

9. Certificate(s) recipient (who should receive certificates) including name, address, telephone, facsimile, email address. (NO P.O. Boxes)

Recipient Name:

Mailing Address:

Telephone number:

Facsimile number:

Email address:

10. Agent for Service of Process. Agent must provide U.S. address. No P.O. Boxes.

Name:

Mailing Address:

Telephone number:

11. Name and address of lessor if the facility is leased or located on leased land.

Lessor name:

Lessor address:

SECTION B. GENERAL DESCRIPTION OF THE PIPELINE OR FACILITIES

1. Type of facility or facilities (Pipeline, Platform, Small Production Facility, or other type of facility). If application applies to more than one facility, list the types of facilities to which the application applies.

2. Name and location of facility or facilities to which the application applies.

Facility Name:

Facility location/description and reasonable worst case spill volume:

Facility Name:

Facility location/description and reasonable worst case spill volume:

Facility Name:

Facility location/description and reasonable worst case spill volume:

Facility Name:

Facility location/description and reasonable worst case spill volume:

Facility Name:

Facility location/description and reasonable worst case spill volume:

Facility Name:

Facility location/description and reasonable worst case spill volume:

SECTION C. SPECIFIC DESCRIPTION OF PIPELINE OR FACILITIES

1. PIPELINE(S) (To be completed by pipeline owners or operators.)

a. Pipeline number or designation
vol.

Reasonable worst-case spill

Attach additional spread sheet if necessary

- b. For pipelines, provide the following information that is reflected in the contingency plan for the facility (Reference Title 14, California Code of Regulations, Section 817.02(d)(1)-(2)):

Largest Reasonable Worst Case Spill volume: (US barrels)

Attach additional spread sheet if necessary

2. OTHER TYPE OF FACILITY - This section should be used to describe facilities such as production facilities, and other types of facilities located on, in or near waters of the State or which are located where a release of oil would impact waters of the State.

- a. Type of facility:

Location:

- b. If a production facility, provide the following information:

1. Daily production (barrels)

Gas production:

Net oil:

2. Number of wells producing oil:

3. Number of free-flowing oil wells:

c. For all types of facilities reported in this section provide separate documents describing the facility. These documents should include all relevant information which could affect reasonable worst case spill volume. This information should include transfer rates, line fill capacities, discover times, automatic and manual shut-down times, storage tank capacities and type of secondary containment. Also, provide a diagram of the facility showing location of flow lines, gathering lines, storage tanks, and any other physical characteristics of the facility.

d. The product of the Reasonable Worst Case Spill Volume in Barrels (as determined in the applicant's oil spill contingency plan) multiplied by \$10,000.

- e. Contingency plan for the facility (Reference Title 14, California Code of Regulations, Section 817.04(k)(3)(A).

Largest Reasonable Worst Case Spill volume: (barrels)

SECTION D. DECLARATION
(Must be completed by all applicants)

I, _____ (print name) am the applicant, or I am

a principal of the applicant, an authorized agent*, or an official of the applicant, and have the authority to sign this application on behalf of the applicant. I DECLARE under penalty of perjury that I have examined this application, including all accompanying schedules and statements, and to the best of my knowledge, information and belief, find it to be true, correct, and complete. Furthermore, it is agreed that the applicant named in Section A of this application is the responsible party in the event of an oil spill. I execute this declaration in my

capacity as applicant, principal of the applicant, official of the applicant or as the authorized agent as evidenced by the delegation of such authority provided below.

DATE

Signature

Title or Official Capacity

NOTE:

If the Declaration is signed by an authorized agent of the applicant, the applicant or a principal of the applicant must sign the following Section E. Delegation of Authority

SECTION E. DELEGATION OF AUTHORITY BY THE APPLICANT

(Must be completed by the applicant or principal of the applicant if the above declaration has been executed by an agent acting on behalf of the applicant)

I, (name of the applicant) hereby declare that (name of authorized agent whose signature appears in Section D) is authorized to submit an application for a California Certificate of Financial Responsibility on behalf of the applicant.

DATE

Signature

Title or Official Capacity

INSTRUCTIONS

1. Owner or operator means, in the case of a facility, any person who owns, has ownership interest in, or operates the facility.
2. Submit completed application by selecting one of the following methods:

U.S. Mail or Courier Service:

Department of Fish and Wildlife
Office of Spill Prevention and Response (OSPR)
1700 K Street, Suite 250 Sacramento, CA
95811

Fax: (916) 323-4727

Email: cacofr-facilities@wildlife.ca.gov

WARNING: For security purposes all ZIP files transmitted to DFW/OSPR via email will be returned undeliverable.

3. **Application Process:** Applications will be reviewed within 30 calendar days of receipt provided that adequate information was furnished in the application and acceptable evidence of financial responsibility has been received. OSPR verifies the amount of financial responsibility provided per the formulas located in regulation.

To calculate financial responsibility, see Section 791.7 (e) (2) A-F at <https://www.wildlife.ca.gov/OSPR/Legal/OSPR-Regulations-Index>

4. **Renewal Process:** COFRs for facilities are good for two (2) years. COFRS for mobile transfer units are good for one (1) year. Applications will be reviewed within 30 calendar days of receipt provided that adequate information was furnished in the application and acceptable evidence of financial responsibility has been received.

NOTE: Use of self insurance requires submission of audited financial statements annually.

5. **Specific instructions relating to the application process.**

Section A - General Information: MUST BE completed by all applicants.

Section B - Description of Facility: Description of the Facility: must be completed by all applicants. (If application applies to more than one facility, for each facility list the specific information required in Section C on separate sheets.)

Section C - Specific Description of the Facility or Facilities:

1. **Production Facility:** Must be completed by the owner or operator of those for which the applicant intends to obtain certificate(s) of financial responsibility. A production facility includes the pipeline(s) located in or near waters of the state. The pipeline(s) are not considered a separate facility where the applicant is the owner or operator of both the facility and the pipeline(s).
2. **Pipeline:** Must be completed by the owner or operator of those pipeline(s) and for which the applicant intends to obtain certificate(s) of financial responsibility.
3. **Facilities:** Must be completed by owners or operators of other types of facilities that are located on or in waters of the State or are located where a release of oil could impact waters of the State.

Section D - Declaration

Section E - Delegation of Authority

Miscellaneous instructions:

- a. If a question does not apply, answer "not applicable."
- b. Incomplete applications will not be processed until OSPR receives additional

- information needed for processing.
- c. If additional space is required, supplemental sheets may be attached.

Please contact the Financial Responsibility Unit at (916) 445-9338 if you have any questions

SURETY BOND FOR OIL SPILL RESPONSE AND DAMAGES

DFW 1948 (New 3/16/15) Page 1 of 5



SURETY BOND FOR OIL SPILL RESPONSE AND DAMAGES
(Government Code Section 8670.37.51 et.seq.)

Bond No. _____

KNOW ALL BY THESE PRESENTS,

1. That we, _____, as
(Name of applicant)

Principal, _____, a
(Name of surety)

corporation organized under the laws of the State of, and authorized to transact surety consideration, are held and firmly bound unto the State of California, Office of Spill Prevention and Response, as Obligee in the just and full amount of Dollars (\$) to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, firmly by three presents;

WHEREAS,

2. _____, as Principal, is Owner or Operator of the
(Name of principal)
(insert either "vessel" or "facilities") specified in the attached schedule, and desires to establish financial responsibility in accordance with Article 5.5 (commencing with Section 8670.37.51) of Chapter 7.4 Division 1 of Title 2 of the Government Code and Title 14, California Code of Regulations, Subdivision 4, (Sections 790 et. Seq.) (the "Regulations");

WHEREAS,

3. Government Code Section 8670.37.51 and the Regulations require proof of financial responsibility in the event of the discharge of oil upon or into waters of the State of California from a scheduled vessel or facility;

WHEREAS,

4. Government Code Section 8670.37.54 and Section 795 of Title 14 of the California Code of Regulations provides for the posting of the Surety Bond to demonstrate financial responsibility;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

5. If

(Name of Principal)

shall pay, pursuant to existing law, the cost of cleanup and removal of all oil spilled or discharged into or on waters of the State including spills which could impact waters of the State, all damages as defined by California Government Code Section 8670.56.5(h) including costs or expenses incurred in the restoration or replacement of natural resources damaged or destroyed, and all other claims under applicable law that

(Name of Principal)

has a legal liability to pay when it is determined that is the party responsible for the spill or the discharge of oil, then this obligation shall be void, otherwise to remain in full force and effect;

6. Subject to the provisions of this instrument,

(Name of surety)

as Surety, agrees, to discharge the Principal's legal liability with respect to any claim arising under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), for cleanup and damages specified in California Government Code, Section 8670.56.5(h), resulting from oil spilled or discharged in or on waters of the State, or spills that could impact waters of the State, where the herein named Principal is determined to be the responsible party;

7. Surety's liability attaches upon receiving notice from the Administrator of the Office of Oil Spill Prevention and Response (the "Administrator") that the Principal is the responsible party with respect to a spill or discharge of oil, as specified in paragraph 6, and has failed to pay or perform pursuant to existing law;

8. Any claim for which liability may be lawfully established against the Principal as a responsible party may be asserted directly by the Administrator against the Surety subject to the terms and conditions of the instrument;

9. During the effective period of this Surety Bond, if the Principal named herein requests that a facility or vessel owned or operated by the herein named Principal, and not specified in the attached schedule, become the subject of this Surety Bond, and if the inclusion of that vessel or facility does not increase the required amount of the Surety Bond, then that vessel or facility is considered to be subject to this Surety Bond;

10. Surety agrees to remain bound under this Bond for so long as the Principal named herein must comply with the financial responsibility requirement of the Regulations for the vessels or facilities listed in the attached schedule, expect that the Surety may terminate this Bond at any time prior to the expiration date set forth in item 11 below by notifying the Administrator in writing. The termination date shall be thirty (30) days after written notice that the Surety has elected to terminate date shall be and has so notified the herein named Principal, is received by the Administrator, as evidence by a United States Postal Return Receipt. With respect to any vessels covered by the Bond which are carrying oil in bulk as cargo and which were loaded prior to the termination date, termination shall not take effect

earlier than (30) days from the receipt by the Administrator of the notice prescribed above and furthermore not until either (1) completion of the discharge of such cargo, or (2) until sixty (60) days after the receipt of the prescribed notice by the Administrator, whichever is earlier;

11. This Bond expires on;
12. This Bond shall be subject to and governed by the laws of the state of California;
13. This Bond is executed by the Surety to comply with the provisions of Article 5.5 (commencing with Section 8670.37.51) of Chapter 7.4 of Division 1 of Title 2 of the Government Code, Title 14, California Code of Regulations, Section 790, et. seq., and Chapter 2, (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, and said Bond shall be subject to all of the terms and provisions thereof.
14. The Surety designates with offices at California, as the Surety's agent in the State of California for service of process for purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

PROVIDED, HOWEVER, THAT

15. Any and all payments hereunder shall be deposited into the standby trust fund established in accordance with Title 14, California Code of Regulations, Subdivision 4, Section 795(c)(5) unless otherwise directed by the Administrator;
16. This Bond shall constitute one continuing obligation unless otherwise canceled by the Surety. Said Surety shall have the right to cancel this Bond by providing notice as set Paragraph 10 above;
17. In no event shall the aggregate liability of the Surety hereunder exceed the penal sum of the Bond.

EFFECTIVE DATE: _____
(Month/Day/Year)

Name of Principal _____

Address of Principal _____

(Authorized signature of Principal)

(Title)

Executed at _____ on _____
(City and State) (Date)

Name of Surety

Address of Surety

I declare under penalty or perjury, under the laws of the State of California, that the foregoing is true and correct and that (insert either: "I have executed the foregoing Bond under an unrevoked power of attorney" or "I am an officer or director of Surety with authority to bind Surety to the foregoing Bond and I have executed the foregoing Bond under such authority under the laws of the State of California.")

Executed at, on _____
(City and State) (Date)

Signature of Attorney-in-Fact for Surety (or Officer or Director of Surety)

Printed or Typed Name of Attorney-in-Fact for Surety (or name and Title of Officer or Director of Surety)

AFFIX CORPORATE SEAL (if applicable) (If person signing on behalf of Surety is not Surety's attorney-in-fact, include title and resolution of the Board of Directors giving authority to bind Surety.)

ACKNOWLEDGMENT

State of _____

County of _____

On, before me
(Date)

(Name, title of officer-e.g., "Jane Doe, Notary Public")

Personally appeared

personally known to me, or

proved to me on the basis of satisfactory evidence,

to be the person whose name is subscribed to this instrument and acknowledged to me that he/she executed it in his/her authorized capacity, and that by his/her signature, on this instrument the person, or entity upon behalf of which the person acted, executed the instrument.

[Notary Seal]

Witness my hand and official seal.

(signature of notary)

Notary Public for the State of

My commission expires: _____

(If more space is needed, attach a separate sheet)

SCHEDULE OF FACILITIES

Type of Facility

Name of Facility

Location of Facility



Trust Agreement

This Trust Agreement dated _____, (the "Agreement") is by and between

_____, ("Trustor") and

(Name of owner or operator)

_____, (Name of corporate trustee or bank)

incorporated in the State of ("Trustee"), and the Administrator of the Office of Spill Prevention and Response, Department of Fish and Wildlife, State of California, the beneficiary of the Agreement (hereinafter referred to as the "Administrator").

1. Recitals

- 1.1. Whereas, the State of California has enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Government Code Section 8670.1, et seq.) (The "Act") and pursuant to Government Code Section 8670.4, the Governor of the State of California has appointed an Administrator for oil spill response.
- 1.2. Whereas, the Act requires that no person may operate a facility (as defined) unless the owner or operator has obtained a certificate of financial responsibility for the facility from the Administrator.
- 1.3. The Act also sets forth the requirement that certain levels of financial ability to pay for damages in the event of an oil spill be demonstrated. Financial responsibility may be demonstrated by evidence of insurance, surety bond, guaranty, letter of credit, qualifications as a self-insurer, or any combination thereof, or other evidence of financial responsibility.
- 1.4. Whereas, Regulations promulgated by the Administrator provide that Applicants utilizing surety bonds, guarantees, or letters of credit, to demonstrate evidence of financial responsibility shall establish a standby trust fund to provide assurance that funds will be available when needed to pay for cleanup and damages resulting from oil spilled or discharged into waters of the State. Under the terms of the surety bond, guaranty, or the letter of credit, all payments there under shall be deposited by the provider of financial assurance directly into the standby trust fund (the "Fund") in accordance with the Administrator's instructions (Title 14, California Code of Regulations, Subdivision 4, section 795 (c) (5), section 795 (d) (3), and Section 795 (e) (6)) (the "Regulations").
- 1.5. Whereas, Trustor, either directly or indirectly through various operating Subsidiaries, owns and/or operates facilities (as defined in the Act).
- 1.6. Whereas, Trustor has elected to establish a [] surety bond, [] letter of credit, or [] guaranty in a form acceptable to the Administrator, to provide all or part of such financial assurance for the facilities referred to herein and is required to establish a Fund able to accept payments from the instrument. The surety bond, letter of credit, or guaranty established by the Trustor provides that it is a condition of such obligation that if Trustor shall pay or cause to be paid to claimants all sum or sums for which Trustor may be held legally liable under the Act, the obligation is void; otherwise it shall remain in full force and effect.

- 1.7. Whereas, the purpose of this Agreement is to establish the Fund as set forth by the Regulations for the receipt of payments made under the surety bond, letter of credit, or guaranty.
- 1.8. Whereas, the Trustor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.
- 1.9. In consideration of the mutual benefits to Trustor, Trustee, and the Administrator, the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor, Trustee and Administrator or agree as follows:

2. Definitions As used in this Agreement:

- 2.1. The "Trustor" means the owner or operator who enters into this Agreement and any successors or assigns of the Trustor.
- 2.2. The "Trustee" means the Trustee who enters into this Agreement and any Successor Trustee. The Trustee hereby agrees that any action arising from this Agreement shall be heard in State or Federal court located in the State of California, interpreted under the laws of the State of California, and that the Trustee submits to the jurisdiction of such courts. The Trustee agrees in accepting the responsibilities as Trustee to provide an accounting and be responsive to other inquiries concerning the Agreement from the Administrator or his or her designated representatives. The Administrator shall retain the right to approve any successor Trustee nominated or appointed for the Trust Agreement, including, but not limited to, a court appointed Trustee
- 2.3. The "Administrator" means the Administrator for oil spill response appointed by the Governor of the State of California pursuant to Government Code Section 8670.4.

3. Identification of the Financial Assurance Mechanism

- 3.1. This Agreement pertains to the surety bond, letter of credit, guaranty from which the Fund is established to receive payments. Attached here to as Exhibit A and incorporated here in by this reference is a copy of the surety bond, letter of credit, or guaranty.

4. Establishment of the Fund

- 4.1 The Trustor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the Administrator. Trustor and Trustee intend that no third party have access to the Fund except as here in provided. The Fund is established as a standby to receive payments and initially shall not consist of any property. Payments made by the provider of financial assurance pursuant to the Administrator's instruction are transferred to the Trustee and are referred to as the assets of the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement.
- 4.2 The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible for the amount or adequacy of, nor any duty to collect any sums from the Trustor or provider of financial assurance.
- 4.3 Nothing contained in this Agreement shall be construed as a waiver by Trustor of any defenses to liability it may have under the Act or other applicable law.

5. Duties of Trustee

- 5.1 The Trustee shall make payments from the Fund as the Administrator shall direct, in writing, to provide for the payment of cleanup and damages resulting

from a spill or discharge of oil in waters of the State for which Trustor may be legally liable under the Act. Trustee shall perform the services and carry out the responsibilities specifically enumerated and described below, and shall perform such additional services and periodically carry out such additional responsibilities designated by Trustor which will reasonably be within the scope of the responsibilities and duties described below to the extent acceptable to the Administrator and Trustee.

- 5.2 The Administrator shall periodically advise Trustee in writing of claims made by the Administrator against the, and

(Provider of financial assurance)

Trustee shall notify Trustor and the Administrator of receipt of any payments by it from the provider of financial assurance pursuant to the terms of the surety bond, letter of credit, or guaranty on account of claims made by the Administrator.

- 5.3 The Administrator agrees to send to Trustee and to Trustor a copy of each claim it renders to the, under the surety, and

(Provider of financial assurance)

bond, letter of credit, or guaranty at the time it renders such claim Trustee shall immediately notify Trustor and the Administrator in the event that Trustee does not receive payment in full of each such claim from the,

(Provider of financial assurance)

and within ten (10) days of the date of such claim.

- 5.4 When the _____ makes a payment to

(Provider of financial assurance)

Trustee pursuant to the terms of the surety bond, letter of credit, or guaranty, Trustee shall promptly cash the check or otherwise convert the form of payment to good funds and place such assets in the Fund, a segregated trust account entitled. Thereafter, Trustee shall hold the assets

(Name of Account)

of the Fund until disbursed pursuant to the terms of this Agreement refunded to the Trustor, as directed in writing by the Administrator, pursuant to the laws of the State of California. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

6. Payments Comprising the Fund

- 6.1. Payments made to the Trustee for the Fund shall consist of cash and/or securities acceptable to the Administrator. Securities acceptable to the Administrator are those delineated in Government Code Section 8670.53.7. The decision of the Administrator as to whether the securities meet the requirements of Government Code Section 8670.53.7 is final.

7. Trustee Management

- 7.1 Trustee is authorized to invest any and all assets of the Fund in such investment as Trustor may periodically recommend subject to the Administrator's approval. Trustee is initially directed to invest the assets in the Fund in money market funds rated "AAAm" or commercial paper rated "A-1" by Standard of Poors or money market funds or commercial paper rated "P-1" by Moody's Investors Services. Each investment by Trustee shall be available

without premium or penalty on no more than thirty (30) days notice. All income and proceeds of any such investment shall be held by Trustee in the Fund subject to the terms of this Agreement.

- 7.2 If the Administrator determines Trustee has sufficient assets in the Fund to meet the requirements of the Act, then, at the written direction of the Administrator, the interest earned and paid out on such investments shall be remitted to Trustor by wire transfer or interbank transfer to/for

(Name of Bank)

the account of/in accordance with the

(Name of Account)

the following instructions.

Trustor: c/o-Name of bank, address:

Account number:

Trustor shall advise Trustee in writing (with a copy to the Administrator) of any change in the identity of such bank or bank account.

- 7.3 Monthly, and at such other times as Trustor or the Administrator may reasonably request, Trustee shall provide Trustor and Administrator with a statement of all investments of assets in the Fund, and a statement of all transactions with respect to the Fund (including receipts, investments and disbursements and interest earned) not previously reported.

8. Taxes and Expenses

- 8.1 Either Trustor shall provide Trustee with its employer identification number as assigned by the Internal Revenue Service. All interest or other income earned on the Account shall be taxed to Trustor. In addition, Trustor shall complete and return to Trustee any and all tax forms or reports required to be maintained or obtained by Trustee on account of the Fund; **OR** All taxes of any kind that may be assessed or levied against or in respect to the Fund shall be paid from the Fund.

- 8.2 All other expenses incurred by the Trustee in connection with the administration of this Trust, including reasonable fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Trustor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

9. Trustee Compensation

- 9.1. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Trustor.

10. Limitation on Duties of Trustee

- 10.1 Trustor covenants and agrees to indemnify and hold Trustee harmless against all liability for tax withholding and/or reporting for any payments made by Trustee pursuant to this Agreement. Such indemnity shall survive the termination or discharge of this Agreement or resignation of Trustee.
- 10.2 Trustee shall have no duties or obligations except those expressly set forth in this Agreement. Trustee shall have no responsibilities or liability to any of the parties here to or their successors for any action taken by it in good faith upon receipt of any instrument or other writing believed by it to be properly signed or presented. In case any property deposited under this Agreement shall be attached, garnished or levied upon pursuant to an order of court or other authority having jurisdiction, or the delivery thereof shall be stayed or enjoined by an order of court, or any order, judgment or decree shall be made or entered by any court affecting such property, or any part thereof, Trustee shall obey and comply with all final writs, orders, judgments or decrees so entered or issued by any court, without the necessity of inquiry whether such court had jurisdiction; and, in case Trustee obeys or complies with any such writ, order, judgment or decree, it shall be held harmless and indemnified by Trustor by reason of such compliance. Upon receipt of notice of an writ, order, judgment or decree, Trustee will transmit copies of said writ and other process of pleading to all parties here to.
- 10.3 Trustee shall have no obligation to make any payment or disbursement of any type pursuant here to or to incur here under unless there shall have been deposited or accrued with Trustee sufficient funds therefore.
- 10.4 The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration in this Trust, or in carrying out any directions by the Trustor or the Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Trustor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Trustor fails to provide such defense.
- 10.5 Trustee shall not be liable for any error or judgment made in good faith by an officer of Trustee, unless it shall be proved that Trustee was grossly negligent or acted intentionally in a bad faith. Trustee shall have no liability for any action or omission to act with respect to its duties under this Agreement undertaken in good faith acting in reliance upon the advice of its independent counsel.
- 10.6 The Trustee shall not be liable for any loss, or expense arising out of or in connection with the performance of its duties hereunder, except that Trustee shall not be indemnified or held harmless against any such loss, liability or expense arising out of its gross negligence or willful misconduct. Trustee shall be under no obligation to institute or defend any action, suit or legal proceeding in connection herewith, unless first indemnified by Trustor and held harmless to its satisfaction in accordance with the foregoing. Such indemnity shall survive the termination or discharge of this Agreement or resignation of Trustee.

11. Assignments

- 11.1. Trustor and the Administrator have relied on the reputation, financial condition and other attributes of the Trustee in selecting Trustee to act herein. As a consequence, Trustee shall have no right, power or authority to assign this Agreement, or any portion thereof, or subcontract its services, or any monies

due or to become due here under, either voluntarily, involuntarily or by operation of law, without the prior written consent of Trustor and the Administrator.

12. Resignation and Removal of Trustee

- 12.1. Trustee may resign after thirty (30) days following written notice to Trustor and the Administrator. Similarly, Trustee may be removed and replaced after thirty (30) days following written notice to Trustee and the Administrator by Trustor. In either event, the duties of Trustee shall terminate thirty (30) days after the day of such notice (or as of such earlier date as may be mutually agreeable to Trustor, Administrator, and Trustee), and Trustee shall deliver the assets then comprising the Fund to a successor Trustee appointed by Trustor and agreed to by the Administrator, as evidenced by a written notice executed by Trustor and the Administrator filed with Trustee.
- 12.2. If Trustor shall have failed to appoint a successor Trustee prior to the expiration of thirty (30) days following the date of such notice of such resignation or removal, Trustee shall be discharged from all responsibility as Trustee hereunder. Trustor agrees to obtain a new Trustee within thirty (30) days upon the termination or resignation of the current Trustee, and agrees that selection of a new Trustee is subject to the approval of the Administrator. Any objection to the selection of a successor Trustee shall be given in writing within five (5) days after Trustor identifies the proposed new Trustee. During any period when no Trustee has been hired by Trustor, Trustor shall enter into an interim agreement with the Administrator, in form and substance satisfactory to Trustor and the Administrator, pursuant to which Trustor shall perform the primary functions of Trustee hereunder.
- 12.3. Upon acknowledgement by any successor Trustee appointed in accordance with the foregoing provisions of this section, of the receipt of the funds then comprising the Fund, Trustee shall be fully released and relieved of all duties, responsibilities and obligations under this Agreement.

13. Amendment of Agreement

- 13.1. This Agreement may be amended by an instrument in writing executed by the Trustor, the Trustee, and the Administrator, or by the Trustee and the Administrator if the Trustor ceases to exist.

14. Irrevocability and Termination

- 14.1. Subject to the right of the parties to amend this Agreement as provided herein, this Trust shall be irrevocable and shall continue until terminated. This Agreement and Fund hereunder may be terminated at any time by and upon the receipt by Trustee of a written notice of termination executed by Trustor and Administrator directing the disposition of the assets then constituting the Fund which are held by Trustee under and pursuant to this Agreement, and the distribution by Trustee of all such assets in accordance with such written instructions. Upon termination of this Agreement, Trustee shall be fully released and relieved of all duties, responsibilities and obligations under this Agreement.

15. Notices, Instructions and Directions

- 15.1. All notices, instructions and directions to be given by Trustor hereunder shall be deemed to be duly authorized if signed on behalf of Trustor by officer empowered by the Board of Directors, Chief Executive Officer or any person

duly empowered by Trustor, in writing, to legally bind Trustor to this Agreement. All notices, instructions and directions to be given by the Administrator shall be deemed to be duly authorized if signed on behalf of the Administrator, by the Administrator's designee as such designation is evidenced in writing. A copy of any notice, instruction or direction hereunder given by any party here to the other shall also be given to all other parties.

- 15.2. All notices, instructions, directions or other documents to be given or made hereunder shall be in writing and shall be telegraphed, cabled, telexed, delivered, sent by facsimile transmission or express courier service or sent by certified mail (return receipt requested), postage prepaid, addressed as follows:

Trustor:

Beneficiary: Administrator
Office of Spill Prevention and Response
Department of Fish and Game State of
California P.O Box 944209

Trustee: _____

Attention:

Any such notice or other communication if telegraphed, cabled or telexed shall be deemed to have been given on the business day following dispatch thereof; if sent by express courier service, shall be deemed to have been given on the next business day; if personally delivered or sent by facsimile transmission, shall be deemed to have been given on the day of such delivery or transmission; and, if sent by mail, shall be deemed to have been given on the third (3rd) business day after the mailing thereof such notices, instructions or directions are to be given by giving notice of its new address (or addresses) to the other parties as provided in this section.

16. Miscellaneous

- 16.1. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors without the execution of any additional instrument or any other act. This Agreement, together with the applicable provisions of the surety bond, letter of credit, or guaranty constitute the final, exclusive and complete statement of the agreement of the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

17. Severability

- 17.1. If any term or provision of this Agreement is held to be invalid or unenforceable under the laws of any jurisdiction, the validity of the remaining

terms and provisions of this Agreement shall not be affected thereby.

18. Choice of Law

18.1. This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

19. Interpretation

19.1. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized and then corporate seals (if applicable) to be hereunto affixed and attested as of this day of, 20.

TRUSTEE

BY:

TITLE:

TRUSTOR

BY:

TITLE:

BENEFICIARY:

ADMINISTRATOR
OFFICE OF SPILL PREVENTION AND RESPONSE
DEPARTMENT OF FISH AND WILDLIFE STATE
OF CALIFORNIA

ACKNOWLEDGMENT

State of _

County of

On _____
(date)

before me _____
(name, title of officer-e.g., "Jane Doe, Notary Public")

Personally appeared

personally known to me, or
proved to me on the basis of satisfactory evidence,

to be the person whose name is subscribed to this instrument and acknowledged to me that he/she executed it in his/her authorized capacity, and that by his/her signature on this instrument the person, or entity upon behalf of which the person acted, executed the instrument.

[Notary Seal]

Witness my hand and official seal.

(signature of notary)

Notary Public for the State of
My commission expires:

ACKNOWLEDGMENT BY BANK OR OTHER CORPORATE TRUSTEE

State of _

County of

On _____
(date)

before me _____
(name, title of officer-e.g., "Jane Doe, Notary Public")

Personally appeared

personally known to me, or
proved to me on the basis of satisfactory evidence,

to be the person whose name is subscribed to this instrument and acknowledged to me that he/she executed it in his/her authorized capacity, and that by his/her signature on this instrument the person, or entity upon behalf of which the person acted, executed the instrument.

[Notary Seal]

Witness my hand and official seal.

(signature of notary)

Notary Public for the State of
My commission expires:

State of California - Department of Fish and Wildlife

CALIFORNIA ENDORSEMENT FOR MARINE FACILITIES OIL SPILL LIABILITIES

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California Endorsement for Facilities Oil Spill Liabilities

- A. This Endorsement forms a part of the Policy to which it is attached;
- B. This Endorsement provides coverage for any legal liability or damages as specified under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (California Government Code Section 8574.1 et seq.; herein "the Act") as a result of a discharge of oil into or upon the waters of the State of California or a discharge of oil in an area that threatens to impact those waters from or by any of the Insured's facilities covered by the Policy;
- C. Except as provided by paragraph E. herein, the Insurer agrees to pay, subject to the monetary limits prescribed within the Policy, for which the Insured assumes or is or may be judicially, administratively, or otherwise legally obligated to pay under the Act, without regard to the fault of the Insured, 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 waters of the State.
- D. Damages: Damages arising under the Act, and specifically Government Code Section 8670.56.5, which the Insurer agrees to pay pursuant to the terms of this Endorsement include:
- (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.
 - (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.
 - (4) Loss of subsistence use of natural resources, which shall be recoverable by any injured party 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 injured party 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.
- E. Defenses: The Insurer shall not be obligated to pay 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 by the Insured.

- (2) Damages caused solely by the negligence or intentional malfeasance of the injured party.
 - (3) Damages caused solely by the criminal act of a third party other than the Insured or an agent or employee of the Insured.
 - (4) Natural seepage not caused by the Insured.
 - (5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel owned or operated by the Insured.
 - (6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit issued to the Insured.
- F. The defenses provided in paragraph E. shall not be available if the Insured fails to comply with California Government Code Sections 8670.25 [spill cleanup], 8670.25.5 [spill reporting], 8670.27 [follow spill response plan or orders], and 8670.62 [follow orders].
- G. This Endorsement does not apply to personal injury or wrongful death.
- H. The Policy shall apply to all such claims arising under the Act during the period covered by the Policy and before the effective date of the termination or cancellation;
- I. Failure of the Insured to attempt to join to an action arising under the Act any other party, who may be responsible under the Act, shall not negate any coverage provided by this Endorsement or the policy to which it is attached.
- J. Notwithstanding this Endorsement, the Insurer does not agree to be a guarantor for purposes of the Act or the Federal Oil Pollution Act of 1990, nor does this evidence of insurance constitute consent to allow third party claims to be asserted directly against the Insurer, nor create a direct action right against the Insurer.
- K. Termination or cancellation of this policy insofar as it serves as proof of the Insured's financial responsibility pursuant to Title 14, California Code of Regulations, Section 795, shall not become effective until 30 days after notice, with the exception for nonpayment of premium which will require 10 days notice, has been submitted in writing by the Insurer to the Insured and to the Office of Spill Prevention and Response;
- L. Except as expressed in this Endorsement, all other terms and conditions of the Policy remain unchanged.

The policy to which this Endorsement is attached provides primary or excess insurance as indicated by "x", for at least the limits shown:

This insurance is primary and the company shall not be liable for amounts in excess of \$for each oil spill incident.

The insurance deductible amount is \$

This insurance is excess and the company shall not be liable for amounts in excess of

\$for each oil spill occurrence in excess of the underlying limit of \$for each oil spill incident.

The insurance deductible amount is \$

Issued to ofon, 20.

(Insured)

(Date)

(Year)

Amending Policy No. Effective Date

(Policy Number)

(Date)

Name of Insurance Company

Countersigned by

(Authorized Underwriter Representative)

SCHEDULE OF FACILITIES

Type of Facility

Name of Facility

Location of Facility

(If more space is needed, attach a separate sheet)